



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 07-64-A

April 30, 2008

Petition of NSTAR Electric Company for approval by the Department of Public Utilities of:  
(1) a proposed renewable energy power supply program; and (2) two long-term contracts to purchase wind power and renewable energy certificates, pursuant to G.L. c. 164, § 94A.

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## I. INTRODUCTION AND PROCEDURAL HISTORY

On July 24, 2007, NSTAR Electric Company (“NSTAR Electric” or “Company”) filed a petition (“Petition”) with the Department of Public Utilities (“Department”) seeking approval of: (1) two long-term contracts to purchase wind power and associated renewable energy certificates (“RECs”), pursuant to G.L. c. 164, § 94A; and (2) a renewable energy power supply program for its basic/default (“basic”) service customers. The Department docketed this matter as D.P.U. 07-64.

A public hearing was held at the Department’s offices on August 20, 2007. On August 28, 2007, the Department granted petitions to intervene as full parties filed by: the Attorney General of the Commonwealth of Massachusetts (“Attorney General”); Cape Light Compact; Constellation Energy Commodities Group and Constellation NewEnergy, Inc. (together, “Constellation Energy Group”); Direct Energy Services, LLC (“Direct Energy”); Massachusetts Division of Energy Resources (“DOER”); Energy Consumers Alliance of New England, Inc. d/b/a Massachusetts Energy Consumers Alliance (“Mass Energy”); Massachusetts Electric Company d/b/a National Grid (“National Grid”); and Retail Energy Supply Association (“RESA”). Similarly, the Department granted petitions for limited participation from: Citizens Enterprises Corporation; Community Energy, Inc.; Conservation Law Foundation, the Union of Concerned Scientists, and Environment Massachusetts (together, “CLF et al.”); PPM Energy, Inc. (“PPM”); and TransCanada Power Marketing Ltd. (“TransCanada”).

On September 27, 2007, NSTAR Electric filed a Memorandum of Agreement with the Cape Light Compact (“Cape Light Compact Settlement”), which contains provisions that, as described in Section II.D., below: (1) clarify aspects of the Petition; (2) require commitments by NSTAR Electric; and (3) require support of the Petition by the Cape Light Compact (RR-RESA-3). On October 23, 2007, NSTAR Electric filed a Memorandum of Agreement with Mass Energy (“Mass Energy Settlement”), which contains provisions that, as described in Section II.E., below: (1) clarify aspects of the Petition; (2) require commitments by NSTAR Electric; and (3) require support of the Petition by Mass Energy (RR-MEC-3).

NSTAR Electric sponsored the testimony of: (1) James G. Daly, director of electric and gas energy supply for NSTAR Electric; (2) Penelope McLean Conner, vice-president of customer care for NSTAR Electric; and (3) Henry C. LaMontagne, director of regulatory policy and rates for NSTAR Electric. RESA sponsored the testimony of:

(1) Christopher H. Kallaher, director of government and regulatory affairs for Direct Energy; (2) Ronald M. Cerniglia, director of national advocacy within the government and regulatory affairs for Direct Energy; and (3) Guy Sharfman, managing director of consulting services for Intelometry, Inc. Evidentiary hearings were held on October 22, October 24, November 26, and November 27, 2007. On December 21, 2007, initial briefs were filed by: (1) CLF et al.; (2) Direct Energy; (3) DOER; (4) Mass Energy; (5) PPM; (6) RESA; and (7) NSTAR Electric. On January 24, 2008, reply briefs were filed by: (1) CLF et al.; (2) Direct Energy; (3) PPM; (4) RESA; (5) TransCanada; and (6) NSTAR Electric. An additional evidentiary

hearing regarding certain confidential information was held on March 19, 2008.<sup>1</sup> RESA and NSTAR Electric filed supplemental briefs on the confidential information on April 2, 2008, and reply briefs on the confidential information on April 7, 2008. The evidentiary record consists of 316 exhibits.<sup>2</sup>

## II. SUMMARY OF NSTAR ELECTRIC'S PETITION

### A. Introduction

NSTAR Electric proposes to enter into contracts with two wind power projects to purchase a total of up to 60 megawatts ("MW") of renewable generation supply and RECs,

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<sup>1</sup> For a detailed discussion of the procedural history of this matter, refer to the following: NSTAR Electric Company, D.P.U. 07-64, at 2, 7, Interlocutory Order on Procedural Schedule (August 31, 2007); NSTAR Electric Company, D.P.U. 07-64, at 2, Interlocutory Order on Procedural Schedule (September 27, 2007); NSTAR Electric Company, D.P.U. 07-64, at 16-17, 22-27, Interlocutory Order on: (1) Appeal of Hearing Officer Ruling; and (2) Motions to Approve Non-Disclosure Agreement (January 16, 2008); NSTAR Electric Company, D.P.U. 07-64, at 4, Hearing Officer Ruling (February 15, 2008); NSTAR Electric Company, D.P.U. 07-64, at 1, Hearing Officer Memorandum (February 26, 2008).

<sup>2</sup> On April 3, 2008, RESA and NSTAR Electric filed a joint motion to move the following materials into the evidentiary record in this proceeding: (1) 27 exhibits from NSTAR Electric; (2) seven exhibits from RESA; (3) NSTAR Electric's 230 responses to information requests, which include (i) six responses to Attorney General information requests, (ii) nine responses to Direct Energy information requests, (iii) 33 responses to DOER information requests, (iv) 82 responses to Department information requests, (v) 20 responses to Mass Energy information requests, and (vi) 80 responses to RESA information requests; (4) RESA's 52 responses to information requests, which include (I) ten responses to Department information requests, and (ii) 42 responses to NSTAR Electric information requests; and (5) NSTAR Electric's 17 responses to record requests, which include (I) ten responses to Department record requests, (ii) three responses to Mass Energy record requests, and (iii) four responses to RESA record requests (Joint Motion at 1; Att. at 1-35). The Department grants this joint motion.

at a fixed price,<sup>3</sup> over a term of ten years, for use within its basic service supply portfolio (Exh. NSTAR-JGD at 2-3). NSTAR Electric proposes to purchase up to 30 MW of wind energy and RECs each from: (1) the Kibby Mountain facility in Maine, which is owned by TransCanada and is still under development; and (2) the Maple Ridge facility in New York, an existing facility operated by Atlantic Renewable Projects II, LLC, an affiliate of PPM Energy (id. at 2-5). The contract for supply from Maple Ridge includes an option to purchase power from the proposed New England Wind, LLC facility (id. at 4-5). As discussed in Section II.B.2., below, the effective dates of the two wind contracts included in NSTAR Electric's Petition have been amended multiple times in the course of this proceeding.

Additionally, NSTAR Electric proposes to establish a renewable energy program ("NSTAR Green") through which its residential and small commercial and industrial ("C&I") basic service customers may designate that a portion of their supply needs (i.e., 50 or 100 percent) be met with the supply and RECs procured through the wind contracts (id. at 3). Customers who elect to participate in NSTAR Green would pay a premium in addition to the regular basic service rate, based on the contractual cost to provide supply and RECs. Any RECs unused by NSTAR Green would be applied to NSTAR Electric's annual renewable portfolio standard ("RPS") requirement (id.). Customers who choose to leave the renewable energy program could resume ordinary basic service or migrate to a competitive supplier (id.).

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<sup>3</sup> NSTAR Electric's contract "price" is a payment rate for the metered output and the associated RECs generated by the two wind projects, which is stated in dollars per megawatthour ("MWH"). One MWH of output from the projects corresponds to one MWH of qualified RECs.

B. Long-Term Contracts for Wind Energy Supply and RECs

1. Solicitation Process

The solicitation process that resulted in the proposed long-term contracts began in September 2006, when NSTAR Electric engaged Navigant Consulting, Inc. (“Navigant”) to issue a request for proposals (“RFP”) on its behalf for “firm and peaking power resources” (Exh. DES-NSTAR-1-2, Att. at 1; Tr. 1, at 130-133). Through this RFP, NSTAR Electric sought to evaluate the reasonableness of replacing the current approach to providing basic service supply, in which suppliers are required to provide supply that varies hourly with the basic service load requirement, with a portfolio approach, consisting of base-load, intermediate, and peaking resources that would be paid a fixed price for every megawatt-hour (“MWH”) generated (Exh. DES-NSTAR-1-2, Att. at 1; Tr. 1, at 130-132; Tr. 2, at 224-226). The RFP sought resources including: (1) portfolio-based or system-based supplies; (2) asset-specific supplies; (3) renewable resources; and (4) turn-key project development opportunities (Exh. DES-NSTAR-1-2, Att. at 1; Tr. 1, at 130-133).

NSTAR Electric received responses to its RFP from 34 projects, including three from renewable energy projects (Tr. 1, at 137-144; Exhs. RESA-NSTAR-1-19; RESA-NSTAR-1-20). After reviewing these offers, NSTAR Electric decided to pursue wind power as a potential means to: (1) lower the costs of RPS compliance; (2) lower price volatility for basic service customers; (3) increase the amount of renewable generation in the marketplace; and (4) provide a renewable energy product to its customers (Tr. 2, at 231-238).

NSTAR Electric subsequently identified 13 wind projects in New England that were commercially operational and an additional 19 projects that were under development (Exh. DPU-NSTAR-5-1).<sup>4</sup> Of these, NSTAR Electric contacted seven wind projects and requested proposals for the long-term provision of RECs and energy (id.).

NSTAR Electric received proposals from six wind projects, of which one, the Maple Ridge project, was commercially operational (Exhs. NSTAR-JGD at 25-26; DPU-NSTAR-5-2). NSTAR Electric then initiated discussions with each project supplier (Exhs. NSTAR-JGD at 26-28; DPU-NSTAR-5-2). NSTAR Electric evaluated: (1) each project's economics; (2) the likelihood of each project under development becoming commercially operational; and (3) the relative cost-effectiveness of each proposal (Exhs. NSTAR-JGD at 26-28; DPU-NSTAR-5-2). NSTAR Electric also engaged Navigant to perform an independent evaluation of: (1) the energy delivery location; (2) cross-border energy sales; (3) energy price escalation; (4) capacity pricing; and (5) the cost to develop the facilities (Exh. NSTAR-JGD at 26-27). NSTAR Electric subsequently entered into contracts for supply from the Maple Ridge and Kibby Mountain wind facilities (Exhs. NSTAR-JGD at 26-28; DPU-NSTAR-5-2).

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<sup>4</sup> NSTAR Electric regarded a project as under development if it had established land acquisition rights and was in the permitting/siting process, and was expected to be in-service in the near term (i.e., the next two to three years) (Exh. DPU-NSTAR-5-1).

2. Description of Proposed Contracts and Renewable Energy Projects

a. PPM Contract for Supply from Maple Ridge

NSTAR Electric proposes to enter into a ten-year, fixed-price contract with Atlantic Renewable Projects II, LLC, an affiliate of PPM Energy, for the supply of electricity and associated RECs from the Maple Ridge facility in New York (“PPM Contract”) (Exh. NSTAR-JGD at 4-5). The Maple Ridge facility consists of 195 wind turbines, with a total capacity equal to 321.75 MW (Exh. NSTAR-JGD at 24). The PPM Contract is for output from Phase 2 of the Maple Ridge facility, which became operational during November 2006 and has a total capacity of approximately 90 MW (Exhs. DPU-NSTAR-2-7; NSTAR-JGD-1, at 6). NSTAR Electric’s share of the output is equal to 33.058 percent of the capacity from Phase 2, not to exceed 30 MW (Exh. NSTAR-JGD-1, at 8). The PPM Contract also provides PPM with an option to supply power from New England Wind facility (formerly, the Hoosac Wind facility), a wind project in western Massachusetts that is currently under development (Exh. NSTAR-JGD at 4-5, 24).

The PPM Contract required, as a condition precedent, the Department’s non-appealable regulatory approval of the contract itself and the proposed renewable energy program no later than December 1, 2007 (Exh. NSTAR-JGD-1, at 20). The PPM Contract was later amended to extend this date to March 1, 2008, then April 1, 2008, and most recently, until May 1, 2008 (First Amendment to Power Purchase Agreement, dated October 16, 2007; Second Amendment to Purchase Power Agreement, dated February 8, 2008; Third Amendment to Purchase Power Agreement, dated March 31, 2008). Additionally, if the Department’s

non-appealable regulatory approval of the contract and the proposed renewable energy program is not received by May 1, 2008, and neither party objects, this condition precedent will be deemed to have been met.<sup>5</sup>

b. TransCanada Contract for Supply from Kibby Mountain

NSTAR Electric proposes to enter into a ten-year, fixed-price contract with TransCanada for the supply of electricity and associated RECs from its Kibby Mountain facility, which is currently under development in Maine (“TransCanada Contract”) (Exh. NSTAR-JGD at 5). The Kibby Mountain facility will have a total capacity of approximately 130 MW, and is scheduled to be in commercial operation by the end of 2009 (Exhs. NSTAR-JGD at 24; NSTAR-JGD-2(a) at 1 (confidential); Tr. 1, at 27). NSTAR Electric’s percent share of the output of the Kibby Mountain facility is equal to 30 MW divided by its total capacity (Exhs. NSTAR-JGD at 23-24; NSTAR-JGD-2(a) at 8 (confidential)).

The TransCanada Contract required, as a condition precedent, the Department’s non-appealable regulatory approval of the contract itself and the proposed renewable energy program no later than December 31, 2007 (Exhs. NSTAR-JGD-2(a) at 17 (confidential); NSTAR-JGD-2(b) at 6 (confidential)). This date was subsequently amended to March 1, 2008, and then June 1, 2008 (Power Purchase Agreement First Amendment, dated September 12,

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<sup>5</sup> We note that because NSTAR Electric and RESA agreed to file final briefs on April 7, 2008, the Department’s non-appealable regulatory approval of the Petition could not be issued at least 24 days prior to May 1, 2008, making this condition precedent impossible to meet. See NSTAR Electric Company, D.P.U. 07-64, at 1, Hearing Officer Memorandum (February 26, 2008); NSTAR Electric Letter on PPM extension (April 15, 2008). Nonetheless, the Department continued its review of both wind contracts and the renewable energy program.

2007; Power Purchase Agreement Third Amendment, dated February 27, 2008;<sup>6</sup> Agreement for the Purchase and Sale of Renewable Energy Certificates First Amendment, dated September 12, 2007; Agreement for the Purchase and Sale of Renewable Energy Certificates Second Amendment, dated February 27, 2008).

3. Proposed Treatment of Wind Energy and REC Output

a. Wind Energy Output

NSTAR Electric proposes to sell the energy supply purchased through the contracts into the wholesale energy spot market administered by the Independent System Operator-New England (“ISO-NE”) on an hourly basis (Exh. NSTAR-JGD at 30). On an annual basis, NSTAR Electric will compare the contractual costs it incurs for the energy supply output with the revenues generated through sales into the wholesale market (“energy settlement”) (*id.*). The net proceeds from the energy settlement will be credited to or debited from customers who enroll in the proposed renewable energy program first, and then to all residential and small C&I basic service customers (*id.*).

b. Allocation of RECs

NSTAR Electric proposes that the RECs procured through the PPM Contract would first be used to satisfy the requirements of customers participating in its renewable energy program (*id.* at 24). Any remaining RECs from the PPM Contract, and all of the RECs

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<sup>6</sup> The Power Purchase Agreement Second Amendment, dated January 7, 2008, amended the delivery point for purposes of the agreement.

procured through the TransCanada Contract, would be used to satisfy NSTAR Electric's basic service RPS requirements (id.).

C. Renewable Energy Program for Certain Basic Service Customers

In conjunction with the procurement of the wind power contracts, NSTAR Electric proposes to offer a renewable energy program ("NSTAR Green") to its residential and small C&I basic service customers (Exh. NSTAR-PC at 3). NSTAR Green is a voluntary program through which these customers can choose to purchase either 50 percent or 100 percent of their total kilowatthour ("KWH") delivered energy usage from renewable resources, using the supply and RECs available as a result of the wind power contracts (id.). NSTAR Green customers will remain on basic service (id. at 3-4). Enrolling in NSTAR Green would not restrict a customer from leaving the program and returning to ordinary basic service at any time (id. at 4). In addition, participation in NSTAR Green would not restrict a customer from choosing to purchase a renewable supply option from the competitive market, or any other type of supply option from the competitive market (Exhs. NSTAR-PC at 4; DPU-NSTAR-4-8). NSTAR Electric estimates that approximately one percent of eligible customers will enroll in NSTAR Green (Exh. NSTAR-HCL at 5).

NSTAR Green customers would take service under the proposed NSTAR Green Service Rider tariffs (id. at 3, citing Exhs. NSTAR-HCL-1(a); NSTAR-HCL-1(b); NSTAR-HCL-1(c)). The NSTAR Green Service Rider sets forth the premium to be added to basic service prices for receiving the specified percentage of RECs as part of basic service (Exh. NSTAR-HCL at 4). NSTAR Electric proposes to determine the premium based upon

the following: (1) the REC price associated with the wind power contracts; (2) the difference between the market energy price and NSTAR Electric's energy costs associated with the wind power contracts; and (3) an estimate of NSTAR Electric's administrative costs to provide the NSTAR Green program (id. at 4-5). Proposed administrative and program costs associated with the NSTAR Green program include: (1) promotion; (2) upgrades to the NSTAR Electric information system; (3) customer information center training; (4) registration; (5) a general and administrative adder; (6) Green-e certification;<sup>7</sup> (7) consultant fees; and (8) a startup grant from the Massachusetts Technology Collaborative, which would be a credit to customers (Exhs. NSTAR-HCL-2; DPU-NSTAR-1-13). NSTAR Electric proposes to reconcile these estimated administrative costs after the end of the third year of the NSTAR Green program (Exh. DPU-NSTAR-1-9(d)).<sup>8</sup>

D. Mass Energy Settlement

1. Introduction

On October 23, 2007, NSTAR Electric filed the Mass Energy Settlement in this proceeding (RR-MEC-3). In exchange for Mass Energy's support of NSTAR Electric's Petition, NSTAR Electric agrees to: (1) provide assistance to competitive REC suppliers; (2) pursue billing capability for competitive REC suppliers; and (3) seek recovery of the costs

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<sup>7</sup> Green-e is an independent certification and verification program for renewable energy and companies that use renewable energy (Exh. DPU-NSTAR-1-13).

<sup>8</sup> Should the NSTAR Green program be discontinued due to lack of customer interest, NSTAR Electric's shareholders will bear any unrecovered administrative costs associated with the NSTAR Green program (Tr. 1, at 188).

of these activities from customers (RR-MEC-3, Att. at 8-9). NSTAR Electric is not obligated to undertake any activities pursuant to the Mass Energy Settlement unless and until the Department approves the wind power contracts and the NSTAR Green program to NSTAR Electric's satisfaction (id. at 9-10).

2. Assistance to Competitive REC Suppliers

As part of the Mass Energy Settlement, NSTAR Electric agrees to provide customer information to licensed electricity brokers who seek to supply RECs to the extent permitted by applicable law (id. at 4). For each NSTAR Electric customer that has registered and agreed to purchase RECs from a licensed electricity provider, NSTAR Electric agrees to: (1) provide the supplier with monthly consumption data in an Electronic Data Interchange ("EDI") format; and (2) recover the cost of implementing EDI functionality for REC-product providers (id. at 4-5).

On the NSTAR Green homepage within NSTAR Electric's website, NSTAR Electric agrees to: (1) list licensed electricity brokers who seek to supply RECs; (2) indicate the availability of REC products from these suppliers; and (3) provide a link to each broker's website (id. at 2-3). NSTAR Electric agrees to work with these suppliers to design and distribute a "bill stuffer" that lists the name, contact information (including website address), product information, and pertinent program enrollment information for all available REC products (id. at 3). NSTAR Electric agrees to accommodate the bill stuffer at least once a year, with all costs to be borne by participating suppliers (id. at 3-4).

NSTAR Electric further agrees to: (1) provide non-discriminatory treatment to REC suppliers; and (2) use a non-discriminatory method to process requests for interconnections of renewable generation facilities to the NSTAR Electric transmission and/or distribution system (id. at 7). In addition, NSTAR Electric agrees to develop a set of terms and conditions to delineate the rights, obligations, and responsibilities of NSTAR Electric and competitive REC suppliers for provision of renewable energy products (id.).<sup>9</sup>

3. Pursuing Billing Capability for Competitive REC Suppliers

Pursuant to the Mass Energy Settlement, NSTAR Electric agrees to seek Department approval in this proceeding to make certain changes to its computer information system and alter customers' monthly electric distribution bills ("Billing Alternative") by: (1) adding a line item to customer bills and providing for billing for non-energy, REC-based products; and (2) recovering the costs of system modifications necessary to accommodate the Billing Alternative through the transition charge, consistent with the treatment of costs to establish basic service and competitive supplier billing (id. at 5). If the Department approves the Billing Alternative, NSTAR Electric will provide a detailed cost estimate to the Department for inclusion in rates, with the reconciliation to actual expenditures in a subsequent transition charge reconciliation proceeding (id. at 6).

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<sup>9</sup> We note that any such set of terms and conditions would have to be proposed to and approved by the Department prior to becoming effective.

#### 4. Cost Recovery

As part of the Mass Energy Settlement, NSTAR Electric clarified that costs associated with the wind contracts and NSTAR Green will be recovered from NSTAR Green customers and through basic service rates (id. at 2). NSTAR Electric also agrees that its future annual reconciliation filings will disclose the costs and revenues associated with the wind contracts, NSTAR Green, and the use of the generation and RECs associated with the wind contracts (e.g., the amount of RECs used for NSTAR Green and RPS compliance annually) (id. at 2).

The Mass Energy Settlement contains several contingencies with regard to cost recovery for its commitments (id. at 5). The Mass Energy Settlement states that EDI functionality and the Billing Alternative are mutually exclusive outcomes (RR-MEC-3, Att. at 6). Should the Department approve the Billing Alternative, then NSTAR Electric will not be required to provide EDI functionality (id.). NSTAR Electric is not obligated to proceed with either proposal absent Department approval (id.). Finally, both proposals are severable, and if the Department does not accept either or both proposals: (1) the Mass Energy Settlement does not state that it shall be deemed to have been withdrawn; and (2) Mass Energy may pursue implementation of such proposal(s) in a subsequent request to the Department (id. at 5-6).

#### E. Cape Light Compact Settlement

On October 27, 2007, NSTAR Electric filed the Cape Light Compact Settlement in this proceeding (RR-RESA-3). In exchange for several commitments, the Cape Light Compact agrees to support NSTAR Electric's Petition (id. at 5). As the primary commitment, NSTAR

Electric agrees not to market NSTAR Green in the Cape Light Compact's territory (id. at 4). Pursuant to the Cape Light Compact Settlement, the prohibition on marketing in the Cape Light Compact territory includes: (1) mailings; (2) bill inserts; (3) advertising in newspapers whose circulation is predominantly in the areas served by the Cape Light Compact; and (4) other marketing initiatives directed specifically to customers served by the Cape Light Compact (id.). This does not prohibit marketing: (1) through NSTAR Electric's website; (2) with media outlets serving areas not predominantly in the Cape Light Compact territory (e.g., Boston newspapers, Boston radio/television outlets); or (3) on NSTAR Electric's billing envelopes (id. at 4-5). NSTAR Electric also agrees to provide the Cape Light Compact and competitive suppliers with the ability to include messages to all customers on the NSTAR Electric customer bill (id. at 3-4).

Additionally, as part of the Cape Light Compact Settlement, NSTAR Electric clarified that costs associated with the wind contracts and the NSTAR Green program will not be borne by customers receiving competitive supply (id. at 2). NSTAR Electric confirms that, as part of its annual reconciliation filing, it will disclose the costs and revenues associated with NSTAR Green as well as the use of the generation and RECs associated with the wind contracts (id. at 3). Finally, NSTAR Electric agrees to include Cape Light Compact customers in any future dynamic pricing pilot program it proposes (id. at 5).

### III. COST-EFFECTIVENESS ANALYSES

#### A. Introduction

As discussed above, NSTAR Electric proposes to sell the electricity output that it receives from the wind projects into the wholesale energy spot market administered by ISO-NE. As such, the cost-effectiveness of each contract depends on the difference between: (1) the contract payments that NSTAR Electric is obligated to make; and (2) the proceeds from the sale of the electricity output. In turn, the proceeds from the sale of the electricity output will depend upon: (1) the hourly output of the wind projects; and (2) the wholesale energy spot market price during the hours that the wind projects produce electricity. NSTAR Electric and RESA employed different approaches to analyze the cost-effectiveness of the two proposed contracts.

#### B. NSTAR Electric

##### 1. Electricity Output

NSTAR Electric evaluated the cost-effectiveness of each of the two proposed contracts by comparing, over the applicable ten-year contract term, the projected costs of each contract with the expected revenue through the sale of the electricity output to the wholesale energy spot market (Exh. NSTAR-JGD-4 (confidential)). NSTAR Electric developed projections for the output of each wind project both during on-peak and off-peak periods (*id.*). NSTAR Electric used the NYMEX Clear out® ISO-NE forward market electricity prices (“NYMEX prices”) as a proxy for ISO-NE spot market prices (Tr. 5, at 497-499). For 2008, NYMEX prices differentiate between on-peak and off-peak periods during each month, while for 2009

through 2012, the NYMEX on-peak and off-peak prices remain constant during each month of the year (Exh. NSTAR-JGD-4 (confidential)). At the time the Petition was filed, NYMEX did not provide prices beyond 2012 (Tr. 5, at 497-499, 528-529). For the years 2013 through 2018, NSTAR Electric assumed that electricity prices will decline slightly from the 2012 NYMEX price levels (id.).

## 2. REC Output

In order to determine the cost-effectiveness of the REC procurement, NSTAR Electric compared the contract price for RECs, the 2007 market price for RECs, and the 2007 rate for alternative compliance payments (“ACP”) of \$57.12 (Exhs. NSTAR-JGD at 28; NSTAR-JGD-3 (confidential)). NSTAR Electric also presented a forecast of market prices for RECs from 2009 through 2018 (NSTAR-JGD-4 (confidential)). NSTAR Electric’s forecast shows REC prices dropping in both 2010 and 2011, and climbing between 2013 and 2018 (id.).

## C. RESA

RESA conducted its own analysis of the cost-effectiveness of NSTAR Electric’s proposed contracts by converting the contract price into the equivalent of what the price would be under a firm, fixed-price, fixed-volume contract (“Adjusted Contract Price”).<sup>10</sup> RESA’s Adjusted Contract Price attempts to account for the risk of future electricity price debits or credits (Exh. RESA-GS-1, at 16 (confidential); RESA Supplemental Brief at 15 (confidential)). In order to develop its Adjusted Contract Price, RESA estimated: (1) output risk, using

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<sup>10</sup> RESA did not present its own analysis and forecast of REC prices.

NSTAR Electric's actual and forecast hourly projections of the output of each wind plant; and (2) price risk, by producing a forecast of hourly ISO-NE prices using the NYMEX prices included in NSTAR Electric's analyses, shaped to hourly values, using historic ISO-NE price patterns (Exh. RESA-GS-1, at 17-18 (confidential); RESA Supplemental Brief at 15-17 (confidential)). Using these forecasts, RESA next computed the hourly cost associated with delivering a fixed volume for each hour, plus the cost associated with buying energy below the fixed volume or selling additional energy in excess of the fixed volume commitment (Exh. RESA-GS-1, at 17 (confidential); RESA Supplemental Brief at 16 (confidential)). RESA then summed the hourly costs for each day of the contract period to compute the total costs associated with modifying the wind contract price to a fixed-volume contract (Exh. RESA-GS-1, at 18 (confidential)). RESA finally computed a "risk premium" by assessing the seasonal volatility of the daily forecast costs, which was then added to the proposed contract price in order to compute the total Adjusted Contract Price (id.).

#### IV. POSITIONS OF THE PARTIES

##### A. NSTAR Electric

##### 1. Long-Term Contracts for Wind Energy Supply and RECs

##### a. Consistent with Applicable Precedent

NSTAR Electric asserts that nothing in St. 164 of the Acts of 1997 ("Restructuring Act") precludes a distribution company from entering into wind contracts to provide basic service (NSTAR Electric Reply Brief at 6, 9, 12). NSTAR Electric rejects RESA's claim that its proposed wind contracts constitute sweeping changes to the wholesale and retail markets,

and require legislative action rather than Department approval (id. at 5). NSTAR Electric also disagrees with RESA's contention that the Department should launch a generic investigation of long-term contracts for renewable resources (id.). Instead, NSTAR Electric argues that the broad notice provided in this proceeding resulted in the participation of all interested parties (id. at 5-6).

NSTAR Electric claims that its procurement of the wind energy contracts for basic service is consistent with the statutory requirements for basic service supply (NSTAR Electric Brief at 6, citing G.L. c. 164, § 1B(d)). NSTAR Electric states that the contracts meet the requirements of G.L. c. 164, § 1B(d) because they were procured through a competitive bidding process (NSTAR Electric Reply Brief at 9). NSTAR Electric states that, after it observed the impact of serious hurricanes on the prices that resulted from its basic service procurement, it concluded a portfolio approach would optimize basic service (Tr. 1, at 130-131, 148). NSTAR Electric states that it focused on long-term contracts for wind energy after Navigant confirmed that these contracts could offer significant savings to customers and provide a hedge against volatile power prices (Exh. NSTAR-JGD at 27; NSTAR Electric Reply Brief at 9). NSTAR Electric argues that its procurement of the proposed wind contracts is consistent with applicable precedent because it solicited bids from multiple parties, and selected those bids that offered least-cost renewable energy products (NSTAR Electric Reply Brief at 11). Additionally, NSTAR Electric argues that it evaluated the financial capabilities of the wind suppliers and, if the supplier's bid was based upon the output of a project not yet in operation, NSTAR Electric considered the likelihood of the

supplier completing its proposed project (NSTAR Electric Supplemental Brief at 10 (confidential); Exh. NSTAR-JGD at 26).

NSTAR Electric disputes RESA's criticism of its RFP process, because RESA mistakenly relies on Department precedent involving natural gas portfolio management contracts (NSTAR Electric Reply Brief at 10). NSTAR Electric argues that RESA attempts to take separate elements of these gas contract solicitations and aggregate them to establish its own standard of review for basic service contract solicitations (id. at 10). NSTAR Electric states that the Department has articulated no such standard for basic service procurement (id. at 10). Instead, NSTAR Electric claims that in the procurement and pricing of basic service, the Department has previously relied on the principle that "[basic] service prices should be market based, be procured through reasonable business practices, and take into account the costs of providing [basic] service, consistent with the development of robust competitive retail markets" (id. at 10, citing Pricing and Procurement of Default Service, D.T.E. 99-60-A at 4-5 (2000)). NSTAR Electric states that the Department has not issued guidelines addressing what constitutes reasonable business practices for procuring basic service, and electric distribution companies have been granted the discretion to select the supplier(s) that would minimize basic service costs (NSTAR Electric Reply Brief at 11, citing D.T.E. 99-60-A at 4-5).

b. Cost Causation Principles Are Upheld

NSTAR Electric rejects RESA's claim that the renewable energy program will violate the principle of cost causation (i.e., that costs of service provided by distribution companies

should be recovered from those customers who can be said to have caused the expense) (id. at 19). According to NSTAR Electric, RESA hypothesizes that procuring more RECs for NSTAR Green customers means that fewer RECs will be available to meet RPS requirements and, as a result, the cost of future ACES will continue to increase for basic service customers (id. at 19-20). NSTAR Electric claims that RESA's argument is: (1) based upon speculation as to future ACP costs; and (2) presumes that NSTAR Electric would not make every effort to ensure cost-effective compliance with RPS requirements (id. at 18-20). Instead, NSTAR Electric claims that RPS compliance costs are driven by short-term markets, which means that the long-term REC contracts offer basic service customers an opportunity for more cost-effective RPS compliance (id. at 20).

c. Cost-Effectiveness of Contracts

(1) Reasonableness of NSTAR Electric's Analysis

NSTAR Electric asserts that, pursuant to G.L. c. 164, § 94A, the Department can and should approve the wind contracts as being in the best interests of customers because they are cost-effective, both in terms of the price of energy and associated RECs (NSTAR Electric Brief at 6; NSTAR Electric Reply Brief at 5, 9; NSTAR Electric Supplemental Brief at 4, 9 (confidential), citing New England Electric System/Nantucket Electric Company, D.T.E. 95-67, at 21 (1995)). NSTAR Electric states that it compared the six wind proposals it received on price considerations, and supplemented its analysis with a high-level comparison to NYMEX prices, which showed that the contract prices compared favorably to future electricity prices (NSTAR Electric Supplemental Brief at 9-10 (confidential)). Based on its analysis,

NSTAR Electric states that it determined that: (1) TransCanada and PPM were the best bidders for NSTAR Electric to pursue contracts with; and (2) both contracts would provide net benefits to basic service customers because the market proceeds would exceed the contract costs (id. at 10). NSTAR Electric states that Navigant's subsequent independent analysis confirmed the reasonableness of the proposed contracts in terms of both the price of energy and the price of the associated RECs, and, as a result, it drafted contracts with PPM and TransCanada (id. at 10, 17-18; Exh. NSTAR-JGD at 26).

NSTAR Electric rejects RESA's contention that the proposed wind contracts and associated monthly price debiting or crediting process would expose both NSTAR Green and basic service customers to price risk (NSTAR Electric Supplemental Brief at 12 (confidential)). According to NSTAR Electric, its customers are protected from price risk through its portfolio of basic service contracts (id. at 5, 12). NSTAR Electric states that its portfolio of basic service contracts provides approximately 2,500 MW of all-requirements, load-following service that includes energy, capacity, and ancillary services needed to ensure the reliability and availability of electricity supply (id. at 5-6). NSTAR Electric contends that because the wind contracts will provide energy and RECs on an as-available basis only, it need not include the costs of establishing reliable electric service, which are already included in the cost of basic service supply (id. at 6).

(2) NSTAR's Response to RESA's Analysis

NSTAR Electric rejects RESA's claim that the wind contract prices must be adjusted for risks associated with hourly changes in the future output of the wind facilities based on

(1) weather variations; (2) operational issues; and (3) planned outages (id. at 6-7). NSTAR Electric disputes RESA's conclusion that the owners of the wind generation facilities have no economic incentive to ensure that the plants are operational during periods of high prices, stating that the capacity markets in New England reward generation facilities for being available during peak periods (id.). NSTAR Electric also contends that, unlike fossil fuel-powered generation facilities that must occasionally be shut down completely for planned maintenance, the owners of wind facilities have no need or incentive to shut down an entire wind farm for maintenance (id. at 7).

NSTAR Electric rejects RESA's alternative analysis of the wind contracts, which attempts to provide a comparison of the value of these intermittent resources to contracts for steady, fixed-volume, fixed-price sources of energy (id. at 5). NSTAR Electric claims that RESA's focus on the comparison of the contract prices to the NYMEX prices is misplaced, and the NYMEX prices were presented to the Department: (1) as a proxy for market prices; and (2) to demonstrate that the wind contract prices will compare favorably to the forward market price of electricity (id. at 10-11). NSTAR Electric claims it used NYMEX prices as a proxy for wholesale prices because it has done so in the past, when it compared the price of firm contracts to market prices by using forecasts that are based on market simulations (id. at 11 (confidential), citing Tr. 3, at 543-545; NSTAR Electric Company, D.T.E. 04-60 (2005); NSTAR Electric Company, D.T.E. 04-68 (2005); NSTAR Electric Company, D.T.E. 04-85 (2005)). NSTAR Electric states that if the Department chooses to adopt RESA's method for analyzing intermittent power purchase contracts, it will create an almost

insurmountable barrier to the approval of long-term contracts of any kind, thereby depriving Massachusetts citizens of the generally accepted benefits of renewable generation (NSTAR Electric Supplemental Brief at 11 (confidential)).

NSTAR Electric rejects RESA's proposed Adjusted Contract Price and underlying risk premium for the wind facilities, claiming that RESA inappropriately assigned a fixed energy obligation to these contracts for an intermittent resource (id. at 5, 15). Also, as discussed above, NSTAR Electric argues that a risk premium is inappropriate because its portfolio of basic service contracts provides all-requirements, load-following service that ensures the reliability and availability of electricity supply 24 hours a day (id. at 5-6, 15). Further, NSTAR Electric states that, even if a risk premium was reasonable, RESA's projections are based upon multiple assumptions and variables that are too speculative to rely upon (id. at 12). NSTAR Electric claims that any attempt to adjust the contract price for output variability would constitute "double-counting" a cost that is already being paid by basic service customers (id. at 15). Further, NSTAR Electric asserts that RESA's proposed risk premium is purposely intended to increase the actual price of the contracts to support RESA's premise that the wind contracts should be compared to firm, fixed-price, fixed-volume contracts (id. at 17-18).

d. Mitigating the Volatility of Energy Prices and RECs

NSTAR Electric states that the wind contracts will provide benefits to all basic service customers because they will: (1) help stabilize energy prices; and (2) reduce RPS compliance costs (NSTAR Electric Brief at 12; Tr. 1, at 132, 140). NSTAR Electric claims that the ten year, fixed-price contracts will serve as a hedge in its basic service supply portfolio, thereby

mitigating price volatility and potentially reducing the overall cost of basic service supply from fluctuating electricity prices or increasing fossil fuel costs (NSTAR Electric Brief at 12; NSTAR Electric Supplemental Brief at 21 (confidential)); Exh. NSTAR-JGD at 39). Over the ten year term of the contracts, NSTAR Electric expects that sale of the energy from the wind contracts into the wholesale spot market will generally result in a credit to NSTAR Green and basic service customers (NSTAR Electric Reply Brief at 12; Exh. NSTAR-JGD at 30; NSTAR Electric Supplemental Brief at 20 (confidential)).

NSTAR Electric states that the direct, long-term procurement of RECs will: (1) reduce RPS compliance costs; (2) meet RPS requirements through the purchase of renewable products instead of paying the ACP; and (3) introduce renewable power into its basic service supply portfolio, which is consistent with the intent of the RPS (Exh. NSTAR-JGD at 20-23). Additionally, NSTAR Electric contends that the contracts will enable it to purchase the associated RECs at a lower cost than basic service customers would pay through a typical procurement, which is driven by short-term market prices (NSTAR Electric Brief at 3).

e. Additional Benefits of the Contracts

(1) Fostering the Development of Renewable Energy

NSTAR Electric contends that by entering into the two long-term contracts, it will eliminate barriers to the development of renewable energy resources in Massachusetts and in the region (*id.*). NSTAR Electric claims that the standard, one year contract term for basic service supply is inadequate for developers to secure credit and financing for the construction of new renewable energy projects, and that they need contracts for a term of ten years or

longer with a stable counter-party (Exh. NSTAR-JGD at 17-18). NSTAR Electric claims that electric distribution companies are best situated to support renewable energy development due to their dependable customer base and experience in managing long-term contracts (id. at 23). By agreeing to enter into two ten year contracts, NSTAR Electric states that it is enabling developers to secure critical funds and financing arrangements that will ensure completion and maintenance of renewable energy projects (NSTAR Electric Brief at 3).

(2) Increased Fuel Diversity

NSTAR Electric argues that it is appropriate to encourage electric distribution companies to structure their electricity portfolios over the long term to achieve flexibility, diversity and reliability of supply, and to support least-cost procurement and long-term price stability (Exh. NSTAR-JGD at 32-33). NSTAR Electric states that the procurement of renewable power is critical in terms of increasing the diversity of its resource portfolio, which will serve to reduce the volatility of retail rates (id. at 32).

(3) Future Benefits Through Emissions Reductions

NSTAR Electric claims that it will take steps to ensure that actual carbon dioxide (“CO<sub>2</sub>”) emission reductions occur as a result of the wind energy contracts (id.). Specifically, NSTAR Electric states that any future CO<sub>2</sub> emissions credits it receives from the wind energy suppliers will be retired and will not be transferred to other generation owners to offset their CO<sub>2</sub> emissions (id.). According to NSTAR Electric, this will result in a reduction of between 1,000 and 1,250 lbs of CO<sub>2</sub> per MWH and, together, the two contracts will reduce CO<sub>2</sub> emissions by almost 100,000 tons (NSTAR Electric Brief at 14; Exh. NSTAR-JGD at 32).

Also, if allowed under the developing Regional Greenhouse Gas Initiative (“RAGI”) program, NSTAR Electric states that it will seek to retire CO<sub>2</sub> emissions allowances in a quantity equal to the tons of emissions displaced by the purchases of NSTAR Green customers, so that the estimated 100,000 tons would not be included in Massachusetts’ emissions cap under RAGI (Exh. NSTAR-JGD at 32).

2. Renewable Energy Program/NSTAR Green

a. Consistent with Applicable Precedent

NSTAR Electric rejects RESA’s argument that the Restructuring Act and the Department’s regulations prohibit NSTAR Electric from offering multiple basic service products to customers, stating that nothing prohibits a distribution company from providing basic service in the manner proposed here (NSTAR Electric Reply Brief at 6). NSTAR Electric argues that RESA’s construction of the statutory requirements related to basic service is too narrow (*id.*). NSTAR Electric argues that G.L. c. 164, § 1B(d) contains a general requirement that “each distribution company shall provide its customers with [basic] service,” without limitation (*id.*). Also, NSTAR Electric argues that G.L. c. 164, § 1 merely defines basic service as “the electricity services provided to a retail customer upon . . . the completion of the term of the standard offer service” (*id.* at 7).

NSTAR Electric also disputes RESA’s contention that distribution companies are required to provide basic service at a single rate, stating that the reference in G.L. c. 164, § 1B(d) to “a [basic] service rate” does not restrict the Department from allowing different basic service rates for different classes of customers (*id.* at 8). Furthermore, NSTAR Electric

claims that the rate structure for NSTAR Green is no different from that required for ordinary basic service because it is based on the costs for the NSTAR Green product, energy, RECs, and includes all costs associated with administering the program (id.). NSTAR Electric asserts that this rate structure is consistent with Default Service Costs, D.T.E. 03-88 (2004) (id.).

NSTAR Electric disputes RESA's claim that the proposed renewable energy program is inconsistent with statutory requirements because the NSTAR Green rate will exceed the average monthly market price of electricity (id. at 11-12). NSTAR Electric claims that its projections show that the contract prices are likely to be below market prices over the ten year term of the contracts, regardless of the average monthly market price of electricity (NSTAR Electric Supplemental Brief at 6 (confidential)). Additionally, NSTAR Electric disputes RESA's claim that the proposed renewable energy program is inconsistent with applicable precedent because the NSTAR Green rate will include an administrative adder (NSTAR Electric Reply Brief at 12). Instead, NSTAR Electric claims that all basic service rates include an administrative adder, which technically brings basic services rates above the wholesale market price of electricity procured in the market (id. citing D.T.E. 03-88). Instead of referring to the average monthly market price of electricity, NSTAR Electric asserts that the tariff rates for NSTAR Green need only be found to be "just and reasonable" (NSTAR Electric Brief at 7).

b. Compatibility with the Competitive Market

NSTAR Electric rejects RESA's arguments that its proposed renewable energy product: (1) constitutes a competitive offering; and (2) subjects NSTAR Electric to the Department's

regulations on distribution companies and their affiliates at 220 C.M.R. § 12.00 et seq. (“Standards of Conduct”) (NSTAR Electric Reply Brief at 13). NSTAR Electric claims that its renewable energy product is a regulated basic service option offered by a distribution company and not a competitive product (id.). Like ordinary basic service, NSTAR Electric states that all aspects of NSTAR Green will be regulated by the Department, including: (1) the price to be charged; (2) the costs to be recovered; (3) the terms of service; and (4) the procurement of renewable contracts to support it (id. at 13-15). Additionally, NSTAR Electric acknowledges the broad definition of an “affiliate,” but states that RESA’s interpretation would prevent NSTAR Electric from providing any energy-related services to customers without being subject to the Standards of Conduct (id. at 13-14). NSTAR Electric claims that, to the extent that a distribution company is merely providing a basic service option to its customers, the Standards of Conduct do not require it to set up an affiliate (id. at 15). Finally, NSTAR Electric claims that its program does not constitute a competitive offering because competitive suppliers can: (1) market without regard to service territories; (2) set prices based on economic and business factors; (3) bind customers to services through contracts; and (4) earn a profit on the services sold (id. at 15-16).

NSTAR Electric asserts that Department precedent permits it to provide a renewable energy product to its basic service customers as long as it clearly demonstrates that providing such a product is compatible with the developments of competitive options for the customer classes to which the product would be available (NSTAR Electric Brief at 6, citing Provision of Default Service, D.T.E. 02-40-B at 46 (2004)). NSTAR Electric states that, in evaluating a

renewable energy program, the Department must consider factors such as: (1) limited applicability only to residential and small C&I customers who receive basic service; and (2) inclusion of a provision allowing participating customers to leave basic service and switch to a competitive generation supplier (NSTAR Electric Brief at 6-7, citing Massachusetts Electric Company, D.T.E. 03-55, at 6).

NSTAR Electric asserts that NSTAR Green is compatible with the development of the competitive market because it is limited to residential and small C&I customers, who currently have few options in the competitive market, and even fewer options to procure renewable energy products (id. at 15-16). NSTAR Electric contends that its proposed renewable energy program could actually encourage the competitive market because it educates and enables customers to choose a supplier and a retail electricity product (id. at 16).

NSTAR Electric claims that NSTAR Green is compatible with the development of competitive supply options because it will not prevent customers from choosing competitive market options, should they develop (id.). NSTAR Electric contends that NSTAR Green will pose no barriers to competition because it would not change a licensed competitive supplier or broker's access to NSTAR Electric customers for: (1) marketing purposes; (2) customer account and usage information; or (3) offering its own integrated energy/REC option to basic service customers (id. at 17). NSTAR Electric states that joining NSTAR Green would not restrict basic service customers from: (1) migrating to competitive supply options, whether through the imposition of fees or a minimum mandatory term of enrollment; or (2) purchasing RECs from the marketplace (id.).

Additionally, NSTAR Electric states that, as part of the Mass Energy Settlement, it has agreed to develop and issue, in coordination with licensed electricity brokers, a bill stuffer that lists the name, contact information (including website address), product information, and pertinent program enrollment information for all voluntary REC products offered by each qualified electricity broker (NSTAR Electric Reply Brief at 18). Furthermore, NSTAR Electric states that, pursuant to the Cape Light Compact Settlement, it will not market its renewable energy program in the Cape Light Compact's territory and it will allow the Cape Light Compact and other suppliers to include a short message to their customers on a new electric supplier bill detail page of the NSTAR Electric customer bill (*id.* at 18-19). Finally, NSTAR Electric states that it will provide a link on its website that lists other suppliers of renewable energy products, as identified by the Department of Energy (*id.* at 16).

c. Fostering the Development of Renewable Energy

NSTAR Electric states that NSTAR Green will enable retail customers to support the development of renewable generation through their incremental purchases of renewable energy and RECs (Exh. NSTAR-JGD at 19-20; Tr. 1, at 133). NSTAR Electric claims that the program is a means to channel customer interest in promoting the development of renewable generation, and will provide renewable generation developers with valuable information regarding the level of demand for their product (NSTAR Electric Brief at 3-4). According to NSTAR Electric, its research indicates that customers are: (1) ambivalent about or unfamiliar with the intent of the Restructuring Act; and (2) interested in supporting renewable energy, assuming that the pricing differentials are relatively low and they are fully aware of the

program (Exh. NSTAR-PC at 5). Overall, NSTAR Electric claims that, by offering NSTAR Green, it can generally increase customer satisfaction and the demand for renewable energy (id.).

NSTAR Electric rejects RESA's arguments that the renewable energy program would be misleading because: (1) customers will not actually receive renewable power; and (2) NSTAR Green will have no incremental effect on the development of renewable energy (NSTAR Electric Reply Brief at 21). NSTAR Electric acknowledges that it is not possible to deliver wind-generated electricity to customers who enroll in NSTAR Green without directly connecting them to the wind farms (NSTAR Electric Brief at 13). Also, NSTAR Electric acknowledges that because wind is an intermittent resource, it cannot be dispatched to match the usage patterns of customer load (id.). Due to these two factors, NSTAR Electric states that it is not possible for customers to receive 50 or 100 percent of their wind energy on a real-time basis (id.). Nonetheless, NSTAR Electric claims that NSTAR Green customers will receive all of the benefits that can be delivered from the intermittent wind resource on an annual basis (id.). NSTAR Electric states that it has not attempted to prove that NSTAR Green will result in incremental benefits to the renewable generation market (NSTAR Electric Reply Brief at 22). However, NSTAR Electric states that it expects such benefits will materialize, based on the contentions of renewable generation developers and the environmental advocates that have had input into the development of NSTAR Green (id., citing PPM Brief at 6; CLF et al. Brief at 5-6).

B. RESA

1. Long-Term Contracts for Wind Energy Supply and RECs

a. Applicable Precedent and the Public Interest

RESA states that the Restructuring Act, Department regulations, Department precedent, and record evidence preclude Department approval of the two wind contracts (RESA Brief at 2).<sup>11</sup> RESA claims that NSTAR Electric has failed to provide sufficient support for its claims about the merits of the long-term contracts, stating that the contract prices will: (1) not generally result in a credit to customers; and (2) not provide customers with significant benefits in terms of energy and REC costs, which means that they will not provide a hedge against price volatility for basic service (RESA Brief at 21-22; Exh. RESA-GS-1, at 5, 11, 19 (confidential)). RESA states that numerous stakeholders, including the Department and NSTAR Electric, have previously recognized the potential customer hazards associated with distribution companies entering into long-term contracts, and the Department should not allow distribution companies to enter into long-term contracts without first conducting a comprehensive generic investigation (RESA Brief at 49-50, citing D.T.E. 02-40-B at 43; Supplemental Comments of NSTAR Electric Company, at 2-3, submitted in Procurement of Default Service Supply for Residential and Small Commercial and Industrial Customers, D.T.E. 04-115).

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<sup>11</sup> Direct Energy joins in both the brief and reply brief filed by RESA (Direct Energy Letter in Lieu of Initial Brief, December 21, 2007; Direct Energy Letter in Lieu of Initial Brief, January 24, 2008).

RESA argues that the Department should reject the long-term contracts at issue in this proceeding because they are: (1) inconsistent with G.L. c. 164, § 1B(d) and G.L. c. 164, § 94A, as a matter of law; and (2) not sound regulatory policy (RESA Brief at 2-3, RESA Supplemental Brief at 19 (confidential)). RESA states that the long-term contracts are inconsistent with the law and applicable Department precedent because they were not the result of a competitive bidding process and inappropriately shift risk from wholesale suppliers to NSTAR Electric's basic service customers (RESA Brief at 39-44, 46-47).

RESA states that a distribution company must, pursuant to G.L. c. 164, § 1B(d), procure basic service through competitive bidding (id. at 2-3, 39). RESA argues that the process that NSTAR Electric undertook to procure the two wind contracts fell short of the competitive bidding that has characterized procurements for basic service and long-term contracts (id. at 40-44). As a result, RESA argues that the procurement process used by NSTAR Electric provides no assurance that the contracts are reasonable, market-based, and will not burden customers with unnecessary and excessive costs over their ten year terms (id. at 24-25, 39).

RESA identifies the following Department requirements for a competitive bidding process: (1) solicitations must be public, open to all qualified bidders, and distributed to a broad range of interested parties; (2) solicitations must contain unambiguous disclosure of the supplies that the distribution company seeks to procure and the criteria used to evaluate and select winning bids; (3) communications between the distribution company and individual bidders are prohibited prior to the bid-selection date; and (4) the winning bids are selected in

accordance with the established criteria (id. at 40, citing KeySpan Energy Delivery New England, D.T.E. 06-9, at 15 (2006); KeySpan Energy Delivery New England, D.T.E. 04-9, at 10-11 (2004)). RESA contends that NSTAR Electric's solicitation process for the wind contracts was conducted on an ad hoc basis, and did not satisfy any of these requirements (RESA Brief at 41-43, citing Tr. 1, at 141-143; Tr. 2, at 225, 234). Furthermore, RESA argues that NSTAR Electric has not provided sufficient justification to depart from these competitive procurement policies (RESA Brief at 46-48).

Additionally, RESA contends that the Department should reject the proposed contracts because NSTAR Electric has failed to establish that they are in the public interest (id. at 3; RESA Supplemental Brief at 22-23 (confidential)). RESA asserts that, since the passage of the Restructuring Act, the Department has required electric distribution companies to procure all-requirements, load-following service for their basic service customers, thereby: (1) placing the risk of serving these customers on the wholesale power suppliers, who are best able to manage that risk; and (2) averting the potential for additional stranded investment that may be chargeable to customers (RESA Brief at 45-46, citing D.T.E. 99-60-A at 6-7). RESA contends that, for residential and small C&I basic service customers, the Department has balanced the goals of limiting rate volatility with the need to send timely price signals, so that these customers could eventually have the opportunity to enjoy the benefits of retail choice (RESA Brief at 46, citing D.T.E. 99-60-A at 7-8; Provision of Default Service, D.T.E. 02-40-B at 44-45). RESA states that, to date, to advance these competing goals, the Department has required distribution companies to conduct semi-annual procurements, each for

50 percent of their basic service supply needs, for a term of twelve months (RESA Brief at 46, citing D.T.E. 99-60-A at 7-8; D.T.E. 02-40-B at 44-45). RESA argues that these policies foster the fundamental pro-competition and pro-customer intent of the Restructuring Act and should not be modified absent sufficient justification (RESA Brief at 46).

RESA claims that NSTAR Electric seeks an exception to these Department policies regarding the procurement of basic service, on the basis that the fixed prices for electricity and RECs under the proposed contracts compare favorably to the projected forward market prices of these products (id., citing Exh. NSTAR-JGD at 4). RESA states that, in addition to the flaws it has identified in NSTAR Electric's analysis of the contract prices as compared to forward market prices (as described below), any benefits to customers from the proposed contracts are offset by the shift in risk of loss from wholesale suppliers to NSTAR Electric's basic service customers that will occur if NSTAR Electric is permitted to enter into these contracts (id. at 46-47).

b. RESA's Response to NSTAR Electric's Analysis of the Contracts

RESA claims that NSTAR Electric's analysis should have included an additional risk premium that customers would need to pay to insulate themselves from the risk of the future market prices (RESA Supplemental Brief at 16 (confidential)). RESA argues that, because there is a virtual certainty that there will be future hourly variations in market prices and future hourly changes in the output of the wind facilities due to weather variations, operational issues, or planned outages, these risks must be quantified and incorporated into the contract price (Exh. RESA-GS-1, at 17 (confidential)). RESA contends that the Adjusted Contract Price it

developed for each contract, as discussed in Section III.C., above, allows for an accurate comparison between NSTAR Electric's proposed contract prices and NYMEX prices (RESA Supplemental Brief at 15-16 (confidential)).

RESA states that NSTAR Electric's analysis fails to demonstrate that the proposed wind contracts will mitigate price volatility and act as a hedge against rising electricity and REC prices (RESA Supplemental Brief at 9 (confidential), citing Exh. RESA-GS-1, at 10 (confidential)). RESA argues that NSTAR Electric's analysis is flawed because it: (1) compares unit-contingent contract prices for the wind projects to a fixed-price, fixed-volume, forward market price; (2) does not account for well-established seasonal and hourly pricing patterns in its forecast of forward market prices; and (3) projects forward prices through 2018, when the annual NYMEX prices are only published through 2012 (Exh. RESA-GS-1, at 11 (confidential)).

First, RESA states that NSTAR Electric's analysis of the proposed contracts is flawed because it makes a misleading comparison (RESA Supplemental Brief at 3 (confidential)). RESA claims that NSTAR Electric's analysis improperly compares the contract prices for the intermittent, unit-contingent wind facilities to NYMEX prices, which are forward market projections that assume firm, fixed-price, fixed-volume energy resources (id.). RESA states that, without including necessary adjustments to the comparison, the Department cannot reasonably rely on NSTAR Electric's analysis to make findings about the cost-effectiveness of the proposed wind energy contracts (id.).

Second, RESA asserts that NSTAR Electric's analysis of the proposed contracts does not accurately evaluate the value of the contracts and, because the value of these unit-contingent contracts is based upon hourly fluctuations of both ISO-NE market prices and the output of the projects, the NYMEX prices must be shaped monthly and hourly to accurately evaluate the value of the contracts (Exh. RESA-GS-1, at 14 (confidential)). RESA claims that failure to shape prices may cause errors when computing the value of the proposed wind contracts (id.). RESA asserts that wind facilities produce variable quantities of energy each hour and that these quantities are influenced by variations in the weather, operational issues, and operational decisions (id. at 12). RESA contends that NSTAR Electric's analysis estimates hourly and monthly output of both wind plants, during on-peak and off-peak periods, but ignores the hourly variation in energy that will be the norm for these facilities (id. at 13, citing Exhs. RESA-NSTAR-2-4 and RESA-NSTAR-2-6).

Finally, RESA states that NSTAR Electric's forecast of REC prices for the period 2009 through 2018 directly contradicts NSTAR Electric's assertion that contract REC prices will produce substantial savings for customers (RESA Supplemental Brief at 9 (confidential), citing Exh. RESA-GS-1, at 10 (confidential)). RESA states that the REC prices in the contracts exceed the REC prices in NSTAR Electric's market forecasts for five to six years out of the ten year term of each contract (RESA Supplemental Brief at 10 (confidential), citing Exh. NSTAR-JGD-4 (confidential)). RESA claims that, unlike NSTAR Electric's projections about the market price of RECs which show the price decreasing sharply and then slowly increasing over the ten year terms of the contracts, it is industry practice to hold REC prices

flat when quoted more than five years into the future (id. at 10, citing Exh. RESA-GS-1, at 10-11 (confidential)). RESA contends that if NSTAR Electric had held REC prices flat between years 2013 and 2017, prices for RECs under both contracts would have exceeded market prices for RECs by an even greater margin (id. at 10-11).

c. Price Volatility and Additional Risks

RESA asserts that NSTAR Electric's proposed treatment of the energy and RECs procured through the two unit-contingent contracts will expose NSTAR Green and basic service customers to considerable price volatility and risk because future wholesale market prices could significantly deviate from the contract prices (id. at 14; RESA Supplemental Reply Brief at 7-8 (confidential), citing Exh. RESA-GS-1, at 5-7, 9 (confidential)). RESA argues that this risk is increased because the operators of the wind facilities have no economic incentive to ensure that the wind facilities are operational during periods of high prices, which would better reward customers than wind facilities that are operating during low price periods (RESA Supplemental Brief at 14 (confidential); RESA Supplemental Reply Brief at 7-8 (confidential)). Accordingly, RESA contends that customers will be exposed to operational and maintenance risks that NSTAR Electric failed to consider (RESA Supplemental Brief at 22 (confidential); Exh. RESA-GS-1, at 8 (confidential), citing Exhs. RESA-NSTAR-2-13 and RESA-NSTAR-2-15).

In addition, RESA argues that NSTAR Electric's proposed treatment of the procured energy and RECs violates the Department's principle of cost causation (RESA Brief at 26-29). RESA claims that, because the RECs purchased through the wind power contracts will be used

to serve the needs of NSTAR Green customers first, when the REC procurement is cost-effective for NSTAR Green customers, fewer RECs will be allocated to ordinary basic service customers, which means that all basic service customers will pay a higher ACP (id. at 26-27). RESA also claims that NSTAR Green customers should not receive a disproportionate share of the credit or debit produced by the energy provided under the wind power contracts on the theory that they are somehow supporting renewable power (id. at 28). RESA argues that if the contracts are approved by the Department, NSTAR Green customers will not be supporting renewable power any more than other basic service customers because, in exchange for their payments, they will receive only: (1) RECs at below-market prices; and (2) a disproportionate share of the credit or debit from the proceeds of the energy sold (id.). RESA argues that the NSTAR Green program reduces the price paid by NSTAR Green customers, at the expense of increasing the price paid by all basic service customers, which is prohibited by the Restructuring Act and the Department's Standards of Conduct (id. at 28-29).

2. Renewable Energy Program/NSTAR Green

a. Introduction

RESA claims that NSTAR Electric's proposed renewable energy program is inconsistent with statutory requirements, regulations, and Department directives regarding basic service (id. at 12-16). Additionally, RESA claims that NSTAR Electric has provided misleading characterizations of the rate impacts of NSTAR Green (id. at 25). RESA states that instead of comparing the price to the basic service rate, which it alleges is the appropriate point of comparison, NSTAR Electric calculates the impact to the total bill, including delivery

charges (id. at 25-26). Consequently, RESA asserts that the rates proposed by NSTAR Electric for NSTAR Green will exceed the basic service rate by 27 percent for NSTAR Green's 100 percent option and not by 15.7 percent, as NSTAR Electric has alleged (id., citing NSTAR-HCL-5(a)). Instead of approving NSTAR Green, RESA urges the Department to explore certain simple, effective measures that could provide residential and small C&I customers with a wide choice of products, including renewable energy offerings (id. at 36).

b. Inconsistent with Applicable Precedent

RESA argues that G.L. c. 164, § 1B(d) requires electric distribution companies to provide basic service at a single rate which "shall not exceed the average monthly market price for electricity" (id. at 13-14, 25). RESA claims that, with the premium, the price of NSTAR Green will be significantly higher than the current basic service price and, therefore, exceed the average monthly market price of electricity (id. at 13-16, 25-26).

c. Competitive Market Issues

RESA argues that the Restructuring Act is highly prescriptive with respect to the involvement of distribution companies in the retail sale of electricity (id. at 13, citing G.L. c. 164, § 1A(b)(1)). Other than basic service as defined in G.L. c. 164, § 1B(d), RESA argues that retail products must be offered through a separate affiliate in compliance with G.L. c. 164, § 1C (id. at 13, 16-17). RESA states that if this were not the case, a multitude of basic service products could be offered to distribution company customers, which would not encourage customers to migrate to the competitive market as the Restructuring Act intended (id. at 14-16).

RESA argues that NSTAR Green will receive the type of competitive advantages that the Department's Standards of Conduct seek to prevent (id. at 20-21). Specifically, RESA states that NSTAR Green will enjoy significant informational and marketing advantages through the use of distribution company assets at customer expense (id. at 20-21, citing Exh. RESA-CHK at 22). As a result, RESA argues that NSTAR Green will: (1) have fundamental cost advantages over other products offered by the competitive market; (2) halt the development of competitive products; and (3) create an anti-competitive marketplace in Massachusetts (id. at 21-22). Finally, RESA contends that there is no support for NSTAR Electric's claim that the Standards of Conduct do not apply to NSTAR Green because it will be regulated by the Department (id. at 22). Instead, RESA concludes that NSTAR Electric has offered no persuasive grounds for bypassing these regulations (id. at 22-24).

d. Effect of Enrolling in the Renewable Energy Program

RESA argues that the renewable energy program should be rejected because it will not have any practical effect on the development of renewable resources in New England (id. at 29-36). RESA claims that NSTAR Electric's proposed renewable energy program is misleading because customers who enroll will not actually receive renewable power in exchange for their premium payments (id. at 29-31). RESA claims that, contrary to NSTAR Electric's assertions, customers who enroll in the renewable energy program will not receive 50 or 100 percent of their power directly from the Maple Ridge or Kibby Mountain wind farms, nor will NSTAR Electric use the output of the wind plants to provide load-following

service to customers (id. at 30). Instead, RESA asserts that the impact of the energy and RECs from these contracts is purely financial (id.).

Similarly, RESA disputes NSTAR Electric's claim that the renewable energy program will provide incremental benefits beyond those offered solely by the proposed contracts (id. at 32). RESA argues that there is no credible record evidence to support the notion that facility operators will generate more wind power in response to demand created by the proposed renewable energy program (id.). Instead, RESA claims that the wind plants will produce what they can, regardless of whether the proposed renewable energy program exists (id.). Because the Maple Ridge facility is currently in operation, RESA argues that there is no way to argue that the facility would not have been constructed or brought online but for the proposed contracts or renewable energy program (id. at 33-34). With regard to the option in the PPM Contract to shift purchases to the anticipated New England Wind facility, RESA notes that this option belongs to the developer and not renewable energy program customers and, therefore, may never be exercised (id. at 34-35).

C. CLF et al.

1. Long-Term Contracts for Wind Energy Supply and RECs

CLF et al. states that long-term contracts are a reasonable and efficient means of RPS compliance (CLF et al. Brief at 3). CLF et al. notes that the Department has recognized that effective RPS compliance minimizes costs and, while the Department has not required companies to enter into long-term contracts for this purpose, it has invited companies to do so (id. at 3-4).

CLF et al. asserts that long-term contracts are a demonstrated means of reducing RPS compliance costs and that the proposed long-term contracts are important for promoting new renewable energy development, which will advance the broader policy objectives of RPS (id. at 4-5). CLF et al. asserts that financing represents a significant barrier to the development of new renewable projects and that long-term contracts offer critical support, including the stimulation of incremental investment, meaningful financial assurance, reduced financial risk, lower financing costs, and continued support of operations and maintenance at facilities (id. at 6).

CLF et al. contends that the proposed wind contracts will provide benefits that exceed any associated risks (id. at 4-5). In addition to reduced costs for RPS compliance, CLF et al. argues that other benefits include reduced transaction and “middle man” costs, providing a hedge against volatility, and price and supply stability without an associated cost premium (id. at 5).

## 2. Renewable Energy Program

CLF et al. states that the proposed NSTAR Green program will advance key policy objectives and, therefore, it should be approved (CLF et al. Brief at 7; CLF et al. Reply Brief at 3). CLF et al. asserts that NSTAR Green will provide substantial environmental benefits to basic service customers (CLF et al. Brief at 8). CLF et al. also contends that NSTAR Green will promote the development of renewable energy (id. at 9-10; CLF et al. Reply Brief at 5).

CLF et al. states that NSTAR Green is a basic service product and not a competitive offering under both the Restructuring Act and the Department’s regulations (CLF et al. Brief

at 8). CLF et al. adds that RESA mischaracterizes NSTAR Green as a competitive product (id. at 11).

CLF et al. states that NSTAR Green is compatible with the development of competitive options, noting that, pursuant to the Mass Energy Settlement, NSTAR Electric has committed to provide information to customers regarding competitive renewable energy offerings (id. at 7-8, 12-13). CLF et al. notes that a competitive market for smaller customers has yet to develop and that a significant benefit of NSTAR Green is that it will educate customers with respect to the availability of choice (id. at 13-14). CLF et al. states that the Mass Energy and Cape Light Compact Settlements will provide enhanced market opportunities for competitive suppliers by providing access to monthly bills and the facilitation of billing (id. at 14-15). CLF et al. concludes that RESA's claim that approval of NSTAR Green will ensure that no suppliers enter the residential and small C&I market is "demonstrably false" and, in fact, the Department's approval of NSTAR Green will do much to ensure that renewable energy suppliers will enter the residential and small C&I market in NSTAR Electric's territory (id. at 15).

Finally, CLF et al. states that NSTAR Green offers a hedge against price volatility, and argues that this hedge will enhance consumer protection and welfare (id. at 10).

#### D. DOER

##### 1. Long-Term Contracts for Wind Energy Supply and RECs

DOER states that, because of the benefits, it generally supports the long-term contracts for wind energy (DOER Comments at 2). If the Department approves the contracts, DOER

states that the Department should direct NSTAR Electric to: (1) document whether RECs are used for RPS compliance or the renewable energy program; and (2) provide RPS compliance assurances similar to those approved as part of National Grid's GreenUp program (id. at 4).

2. Renewable Energy Program

DOER states that it generally supports NSTAR Green because of its positive impact upon the development of renewable energy and the expanded opportunities for residential and small C&I basic service customers (id. at 2). DOER acknowledges that it initially expressed concerns about the potential anti-competitiveness of a distribution company renewable product offering and, instead, urged NSTAR Electric to consider: (1) co-marketing with other entities that offer renewable products; and (2) limiting availability of the program in service territories where renewable energy is currently offered (id.). Accordingly, DOER states that agreements that NSTAR Electric reached with Mass Energy and the Cape Light Compact are improvements to the original program (id.).

DOER asserts that RESA has raised important issues and identified competitive market hurdles for residential and small C&I customers (id. at 2-3). However, DOER contends that these are market-wide issues which may be better addressed in a generic proceeding (id.). DOER concludes that, when deciding whether to approve NSTAR Green, the Department must balance the promotion of retail competition with the promotion of renewable energy products and the removal of barriers to beneficial technologies (id. at 3).

E. Mass Energy

Mass Energy supports NSTAR Electric's proposed renewable energy program, as modified by the Mass Energy Settlement (Mass Energy Brief at 1).<sup>12</sup> Mass Energy argues that the Mass Energy Settlement ensures that NSTAR Green is consistent with the Restructuring Act and Department precedent because it allows licensed electricity brokers a fair opportunity to: (1) offer a REC product to NSTAR Electric's customers; and (2) market RECs, both on customer bills and on NSTAR Electric's website (id. at 3).

According to Mass Energy, customer choice is a primary objective of the Restructuring Act and the Mass Energy Settlement provides NSTAR Electric's customers with a choice of competitive REC products (id.). Mass Energy claims that the Mass Energy Settlement will allow licensed electricity brokers to offer a REC product to NSTAR Electric's customers and provides for fair treatment of competitive suppliers of RECs (id.). Mass Energy claims that, without these opportunities, NSTAR Electric would have a competitive advantage that runs contrary to the purposes of the Restructuring Act, which seeks to encourage both customer choice and a competitive market (id. at 2).

In addition to the other commitments described in Section II.D., above, Mass Energy states that NSTAR Electric will need to upgrade its computer information systems in order to implement the proposed Billing Alternative which would add a licensed electricity broker's product to its monthly customer bill (id. at 4-5). Mass Energy claims that the Billing

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<sup>12</sup> Mass Energy does not specifically address the merits of the proposed long-term contracts for wind energy.

Alternative is necessary to ensure that NSTAR Electric operates its renewable energy program in a manner that will enhance the competitive market for electricity products and customer choice (id. at 6). Mass Energy argues that it is appropriate to recover costs related to the Billing Alternative through the transition charge because the Billing Alternative facilitates the provision of generation services and choice of supplier by retail customers (id. at 5).

F. PPM

PPM states that the Department has construed G.L. c. 164, § 94A to include a determination of whether the petitioner has demonstrated that the contract is in the best interests of its customers (PPM Brief at 2-3, citing New England Electric System/Nantucket Electric Company, D.P.U. 95-67, at 21 (1995)). PPM asserts that the Department can exercise a wide range of discretion in appraising the public interest (PPM Brief at 3, citing New England Telephone and Telegraph Company d/b/a NYNEX, D.P.U. 94-50, at n.77 (1995)).

PPM argues that the Department should approve the long-term contract between its affiliate and NSTAR Electric because the contract satisfies the Department's public interest standard (PPM Brief at 1, 7; PPM Reply Brief at 1). PPM contends that this contract is in the public interest because it will: (1) allow basic service customers who enroll in the proposed renewable energy program to purchase electricity and RECs generated at a wind power facility; (2) provide price certainty and mitigate price volatility through its fixed prices; (3) provide a clean, renewable, and emissions-free energy source; and (4) increase the use and awareness of wind power in Massachusetts (PPM Brief at 3-4). Additionally, PPM contends

that no party to the proceeding has provided a legitimate basis for the Department to withhold its approval of the contract (PPM Brief at 4; PPM Reply Brief at 1).

PPM argues that RESA's proposed interpretation of the public interest standard for contracts would require a proponent to show, with 100 percent certainty, that the contracts will stimulate the development of new, renewable energy projects (PPM Brief at 5; PPM Reply Brief at 2). PPM claims that this proposed standard is distorted and unworkable, and entirely ignores the Department's discretion (PPM Brief at 5; PPM Reply Brief at 2). PPM states that, even if it is only likely that long-term contracts stimulate new project development as RESA claims, the likelihood justifies a Department finding that the contract is in the public interest (PPM Brief at 6; PPM Reply Brief at 3). PPM concedes that RESA has correctly identified some challenges faced by wind developers in the Northeast but argues that long-term contracts provide the certainty that wind developers look for when deciding whether to develop and invest in such projects (PPM Brief at 6; PPM Reply Brief at 3). PPM claims that the market demand for renewable energy creates an incentive for other developers of renewable energy projects to enter the market and, therefore, long-term contracts can and do stimulate new project development (PPM Brief at 5-6; PPM Reply Brief at 3).<sup>13</sup>

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<sup>13</sup> In its brief and reply brief, PPM does not discuss the proposed renewable energy program.

G. TransCanada

1. Long-Term Contracts for Wind Energy Supply and RECs

TransCanada asserts that the Department has construed G.L. c. 164, § 94A to include a determination of whether the petitioner has demonstrated that the contracts are in the best interests of its customers (TransCanada Reply Brief at 4, citing New England Electric System/Nantucket Electric Company, D.P.U. 95-67, at 21 (1995)). TransCanada claims that the proposed contracts will provide NSTAR Electric's basic service customers with the following benefits: (1) the option to buy renewable energy; (2) renewable energy and RECs at reasonable prices; and (3) stable pricing over a ten year period, serving as a hedge against market volatility (TransCanada Reply Brief at 8).

TransCanada states that the Kibby Mountain facility is not dependent on the contracts under review in this proceeding, but the approval of these contracts will certainly enhance its economic viability and increase the likelihood that renewable energy benefits will flow to customers and New England residents (id.). Additionally, TransCanada asserts that approval of the wind contracts will encourage others to develop renewable resources in Massachusetts and New England, whereas rejection would tend to have the opposite effect (id.).

TransCanada claims that the Department has previously interpreted the Restructuring Act to permit distribution companies to enter into long-term contracts for renewable energy as one approach to RPS compliance (TransCanada Reply Brief at 4-5, citing Investigation Into Default Service, D.T.E. 02-40-B at 46 (2003)). TransCanada argues that NSTAR Electric's

proposed contracts for wind energy do not violate any applicable statutes or regulations (TransCanada Reply Brief at 2-3).

## 2. Renewable Energy Program

TransCanada argues that the evidence presented in this proceeding supports approval of the proposed renewable energy program (id.). TransCanada argues that G.L. c. 164, § 1B(d) and 220 C.M.R. § 11.04(9)(c) do not explicitly prescribe or prohibit NSTAR Electric's proposed renewable energy program for basic service (id.). Instead, TransCanada contends that the fundamental purpose of basic service is to serve every customer who is not served by a competitive retail electricity supplier and nothing forbids an electric distribution company from offering beneficial options to its customers at a premium, if approved by the Department (id. at 3). TransCanada argues that NSTAR Electric's proposal is narrowly tailored to provide a specific option to residential and small C&I customers receiving basic service (id. at 7). Additionally, TransCanada asserts that NSTAR Electric's proposal will not result in substantial changes to the basic service procurement process (id. at 6).

TransCanada contends that NSTAR Electric's proposed renewable energy program is compatible with the development of competitive options for the customer classes to which the product would be available (id. at 4-6, citing D.T.E. 02-40-B at 46). TransCanada rejects the argument that the renewable energy program constitutes a competitive offering and, therefore, is subject to the Standards of Conduct (TransCanada Reply Brief at 7). TransCanada states that a similar renewable energy program was approved in Massachusetts Electric Company, D.T.E. 03-55, at 6, Letter Order (July 14, 2003), where the Department found that residential

and small C&I customers should not be deprived of the opportunity to buy renewable energy for a premium (id. at 5-6). TransCanada argues that NSTAR Electric has gone above and beyond what is required of it to make its proposal compatible with the development of competitive options for residential and small C&I customers receiving basic service (id. at 5).

## V. ANALYSIS AND FINDINGS

### A. Long-Term Contracts for Wind Energy and RECs

#### 1. Introduction

In analyzing NSTAR Electric's proposed long-term contracts for wind energy and RECs, the Department first must consider whether the Company's entering into long-term contracts is consistent with our regulatory policies with regard to the procurement and pricing of basic service. Next, the Department will consider the specific terms of the two long-term contracts at issue to determine whether they meet the statutory requirements of G.L. c. 164, § 94A as well as any law, policy, and precedent regarding the provision of basic service.

#### 2. Consistency with Basic Service Policy

General Laws c. 164, § 1B(d) and 220 C.M.R. § 11.04(c)(9) require electric distribution companies to provide basic service to any customer not served by competitive supply. In 2003, the Department considered the provision of basic service to residential and small C&I customers (referred to as "smaller customers") finding that, because there are few competitive supply options available for these customers, basic service "likely will continue to play a central role in ensuring that electric service will be available at a reasonable price"

during the upcoming years.<sup>14</sup> D.T.E. 02-40-B at 7. As such, the Department found that any pricing and procurement strategy for smaller customers must ensure the availability of electric service at reasonable and stable prices. D.T.E. 02-40-B at 44.

Today, smaller customers continue to have few competitive options. Statewide, approximately 90 percent of residential electricity customers (consuming approximately 90 percent of total residential consumption), and 80 percent of small C&I electricity customers (consuming approximately 70 percent of the energy used by this customer class) are basic service customers.<sup>15</sup> If not for the municipal aggregation of the Cape Light Compact, the overall number of residential and small C&I customers relying on basic service would be significantly higher.<sup>16</sup> Based on the continued lack of competitive options available to smaller customers, we again affirm that the manner in which distribution companies procure basic

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<sup>14</sup> In contrast to the lack of competitive options available for smaller customers, the Department found that an active competitive market, characterized by a broad range of competitive options, had developed for medium and large C&I customers. Therefore, the Department concluded that medium and large C&I customers should view basic service as “a short-term, last resort service, rather than a longer-term alternative.” *Id.* at 7.

<sup>15</sup> Source: DOER website (January 2008)  
[http://www.mass.gov/Eoca/docs/doer/pub\\_info/0802.xls](http://www.mass.gov/Eoca/docs/doer/pub_info/0802.xls).

<sup>16</sup> The effect of the Cape Light Compact’s municipal aggregation effort can be estimated by removing the customer migration data from Commonwealth Electric Company’s service territory where the Cape Light Compact provides its program. Absent this data, the number of residential and small C&I customers that are receiving basic service increases to 95 percent and 85 percent, respectively. Source: DOER website (January 2008) [http://www.mass.gov/Eoca/docs/doer/pub\\_info/0802.xls](http://www.mass.gov/Eoca/docs/doer/pub_info/0802.xls).

service supply for smaller customers must ensure its availability at reasonable and stable prices.

While the Department has not specified a strategy by which distribution companies should comply with their RPS requirements, we have stated that companies must take appropriate steps to minimize their RPS compliance costs. D.T.E. 02-40-B at 45-46. The Department has further stated that, while we will not require distribution companies to enter into long-term contractual arrangements for renewable energy in order to comply with RPS requirements, a company that identifies long-term contracts as a means of RPS compliance may seek Department approval for such an approach. D.T.E. 02-40-B at 46. NSTAR Electric seeks such approval here.

Unlike RPS compliance costs, the Department has not previously addressed the issue of whether long-term contracts for renewable energy can be used as part of the basic service energy supply. RESA urges the Department to not allow NSTAR Electric to enter into long-term contracts for energy supply without first conducting a generic investigation into this important policy issue (RESA Brief at 49-50). We do not agree that a generic investigation of long-term contracts is necessary or warranted at this time. Instead, we find that this proceeding provides an adequate opportunity for the Department to review whether NSTAR Electric's proposal to enter into long-term wind energy supply contracts is consistent with our directives to distribution companies regarding the provision of basic service to smaller customers at reasonable and stable prices.

Currently, the Department requires that each distribution company procure 50 percent of its residential and small C&I basic service supply requirements semi-annually, for twelve-month terms. The Department stated that this approach strikes an appropriate balance between two objectives – price stability and price efficiency (i.e., aligning basic service rates with prevailing market prices). D.T.E. 02-40-B at 44-45. As described above, NSTAR Electric proposes to: (1) sell the electricity output from the long-term wind contracts into the hourly energy spot markets administered by ISO-NE; and (2) determine, on an annual basis, the difference between the contractual supply costs and the spot market revenue (Exh. NSTAR-JGD at 30). This difference will be credited or charged, first to customers participating in NSTAR Green, and then to all basic service customers (Exh. NSTAR-JGD at 30; Tr. 1, at 54-55). This proposed treatment of the wind projects' electricity output would not affect the semi-annual solicitations through which the Company procures its approximately 2,500 MW of basic service supply. It would, however, affect the rates that basic service customers pay, in that the rates would no longer be based solely on the results of those solicitations. Instead, the prices that result from the solicitations would be adjusted to account for the incremental costs or savings associated with the wind power contracts.

The Company asserts that the long-term purchase of the wind power at fixed prices will act as a hedge against rising and volatile wholesale electricity prices, which are based primarily on natural gas prices (Exh. NSTAR-JGD at 13; Tr. 1, at 26). RESA disputes this point, arguing that, because of the uncertainty surrounding the output of the wind resources and the hourly spot market prices, the contracts represent more risk, and inappropriately shift risk

from wholesale suppliers to NSTAR Electric's basic service customers (RESA Brief at 39-44, 46-47).

Because of the intermittent nature of wind resources, the Department recognizes that there is uncertainty regarding: (1) the hours during which the resources will produce electricity; and (2) the level of electricity production during the applicable hours. There is also uncertainty surrounding hourly spot market prices in the future. However, a recent study performed by ISO-NE<sup>17</sup> concludes that, for the term of the proposed contracts and possibly beyond, wholesale electricity prices during most hours likely will be driven by the commodity price of natural gas.<sup>18</sup> Thus, it is reasonable to conclude that in many of the hours that the wind resources produce electricity, the applicable electricity spot market price will be based on natural gas prices, which have been rising and increasingly volatile over the past several years. Consequently, the fixed-price nature of the proposed long-term contracts should provide some degree of protection to basic service customers against wholesale electricity price volatility. As such, the Department concludes that fixed-price long-term contracts with renewable resources, such as the wind contracts proposed by the Company, can serve as a useful tool to establish more stable basic service prices, and do not necessarily shift risk from wholesale suppliers to customers.

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<sup>17</sup> New England Electricity Scenario Analysis at 47-52 (August 2, 2007).

<sup>18</sup> The report states that natural gas-fired power plants will set wholesale electricity prices in approximately 90 percent of all hours.

As stated above, the Department has sought to promote basic service rates that are both stable and efficient. The inclusion of the fixed prices of ten-year contracts as an adjustment to basic service rates that otherwise will reflect general energy market volatility provides an appropriate element of basic service rate stability.<sup>19</sup> The Department finds that this additional stability in basic service prices is appropriate in light of the current and potential future lack of competitive options available to smaller customers. Thus, while we will continue to seek ways to assist in the development of the competitive market for smaller customers, our primary focus must be to ensure sure that basic service procurement and pricing is done in a way that furthers our stated goals of efficiency and stability for these customers. Accordingly, we find that NSTAR Electric's proposal to enter into long-term contracts for renewable energy and RECs is consistent with our policy directives to distribution companies to provide basic service to smaller customers at reasonable and stable prices.

### 3. Specific Terms of the PPM and TransCanada Contracts

#### a. Introduction

Pursuant to G.L. c. 164, § 94A, an electric distribution company cannot enter into a contract for the purchase of electricity for a period in excess of one year without the approval of the Department. In any such proceeding, the Department may review and determine the price to be paid for electricity. Without approval or an express provision allowing for the

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<sup>19</sup> Because the amount of the proposed wind contract purchases that would be applied to basic service represents only one to three percent of the Company's total basic service load, the stabilizing effect of the associated price adjustment will be moderate.

Department's review, any contract covering a period in excess of one year will be null and void. Id.

The Department has construed G.L. c. 164, § 94A to include a determination of whether the electric distribution company has demonstrated that the contract is in the best interests of customers and is cost-effective. New England Electric System/Nantucket Electric Company, D.P.U. 95-67, at 21-22 (1995), citing New England Power Company, et al., D.P.U. 1204 (1982), New England Hydro-Transmission Electric Company, Inc. and New England Power Company, D.P.U. 86-247 (1987), and Nantucket Electric Company, D.P.U. 94-114, at 9-10 (1995). The objectives of the contract must be consistent with the public interest. D.P.U. 95-67, at 21-22. To be in the public interest, a contract should be likely to result in net savings for customers. Green Mountain Power/Fitchburg Gas and Electric Light Company, D.P.U. 89-84, at 4 (1990), citing Fitchburg Gas and Electric Company/Northeast Utilities, D.P.U. 89-153, at 4 (1989). A contract may present certain risks to customers, such as the risk of not receiving the projected benefits, but these risks should be mitigated to the extent possible. D.P.U. 89-84, at 4. A contract may be in the public interest if, among other things, it would provide an improved diversification of energy sources and reduced dependence on fossil-fuel generation. New England Power Company, D.P.U. 86-247, at 23-24 (1987).

Thus, the Department must evaluate whether NSTAR Electric's proposed long-term contracts for wind power and RECs are in the public interest and cost-effective for customers. In doing so, the Department focuses on two issues: (1) whether the solicitation process

conducted by the Company was consistent with statutory requirements and Department precedent regarding the procurement of basic service supply; and (2) whether the Company has sufficiently demonstrated that the contracts are likely to be cost-effective and result in net benefits to its customers.

b. Solicitation Process

General Laws Chapter 164, § 1B(d)(4) requires basic service to be competitively procured. Although we have not prescribed detailed rules for basic service solicitation practices, the Department has stated that basic service must be procured “through reasonable business practices.” D.T.E. 99-60-A at 4-5.

Consistent with the Department’s authority to review the rates charged to retail customers, distribution companies are required to file the results of their solicitation for basic service with the Department as soon as they are available. D.T.E. 99-60-B at 22. The Department may then, on its own motion, determine whether an investigation is necessary. D.T.E. 99-60-B at 22. When approving basic service rates, the Department examines whether the solicitation process employed by the distribution company was open and competitive. Massachusetts Electric Company, Letter Order, at 3 (March 31, 2003).<sup>20</sup>

In reviewing the solicitation process used by NSTAR Electric in this case, RESA suggests that the Department use the standard of the review for natural gas resource portfolio

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<sup>20</sup> In addition, the Department reviews a basic service procurement to ensure that it is: (1) consistent with our directives in D.T.E. 99-60-A, D.T.E. 99-60-B, D.T.E. 99-60-C, and D.T.E. 02-40-A; and (2) consistent with the processes followed in the distribution company’s previous solicitations. Massachusetts Electric Company, Letter Order, at 3 (March 31, 2003).

management plans, where RFP solicitations must be “fair, open, and transparent” (RESA Brief at 40-42, citing D.T.E. 04-9, at 10-11; Natural Gas Unbundling, D.T.E. 98-32-B at 54-55 (1999)).<sup>21</sup> RESA takes issue with NSTAR Electric’s solicitation process for the long-term contracts because the RFP was not widely distributed and, instead, only certain facilities that were chosen by the Company were invited to submit bids (RESA Brief at 39-44).

NSTAR Electric should have anticipated that the solicitation process for these long-term contracts would need to substantively address the same standards that have been applied in the procurement of more traditional basic service supplies. However, the procurement before us is unique in at least two fundamental ways. First, its term is longer than any other procurement attempted since the passage of the Restructuring Act in 1997. Second, the procurement is specifically directed at renewable resources that can meet basic service needs and associated RPS requirements. Consequently, there is little experience or history for the procurement of such resources on these terms. Given these unique features, the Department must consider new issues associated with a solicitation process used to procure resources that (1) are long-term in nature, and (2) meet associated RPS requirements. In the context of these new issues, we must review the solicitation process NSTAR Electric used to determine whether it was competitive, and consider how such solicitations should be conducted over time to ensure

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<sup>21</sup> The Department has previously interpreted the “fair, open, and transparent” standard to require that a company demonstrate that: (1) the evaluation process had been clearly stated to each potential bidder; (2) the evaluation criteria were provided; and (3) the pre-bid conference allowed bidders to receive clarification and better understand the company's objectives. D.T.E. 04-9, at 10.

that they meet the Department's fundamental interest in open, competitive, and transparent procurement processes.

Although NSTAR Electric's solicitation was not widely distributed to potential bidders, in this instance we find that NSTAR Electric's failure to conduct a widely distributed solicitation, while less than ideal, is insufficient grounds to reject the proposed contracts and re-open the bidding process. NSTAR Electric used Navigant to identify a broad range of wind facilities, both in operation and still under development, and subsequently sought bids from those facilities that were, in its judgment, capable of serving its needs and likely to generate electricity in the coming years (Exhs. NSTAR-JGD at 25-26; DPU-NSTAR-5-1). In light of the unique nature of this solicitation, we find that NSTAR Electric employed reasonable business practices and that its judgment with respect to the identification of qualified bidders resulted in a competitive solicitation.

Notwithstanding our findings here, to the extent that companies broaden their approaches to the procurement of basic service supplies with respect to resources, price terms, durations, and other contractual conditions, we will continue to require the use of open and competitive solicitation processes, using reasonable business practices, in a manner that reflects the ongoing evolution of regional market designs, regulatory requirements, and the nature of products available in the market. This will be important both to ensure that the solicitations result in the best possible outcome for customers and to ensure that potential bidders are given the confidence that their bids will be considered fairly and appropriately.

c. Benefits to Customers

As noted above, in its review of long-term contracts, the Department must determine whether the contract is in the best interest of customers and is cost-effective. A long-term contract does not necessarily have to be the lowest cost option in order to be in the best interest of customers; in fact, a variety of other factors may need to be considered to assess the full effect of a contract on customers.<sup>22</sup> Examples of other important factors to consider when evaluating contracts include: the term of the contract; the pricing terms (e.g., fixed, variable, indexed prices); the fuel diversity provided by the energy source; the financial viability of the project developer; and any risks associated with project construction or the delivery of power. We have previously stated that a contract may be in the public interest if, among other things, it would provide an improved diversification of energy sources and reduced dependence on fossil-fuel generation. New England Power Company, D.P.U. 86-247, at 23-24 (1987). As such, in evaluating long-term contracts, the Department may consider the cost of a contract against these other factors.

NSTAR Electric claims that the proposed wind contracts are in the best interest of basic service customers because they will cost less than the wholesale market price of electricity, on a present value basis, over the life of the contract. NSTAR Electric also claims that the proposed wind contracts offer additional benefits to basic service customers by providing long-term price stability and increased fuel diversity (Exh. NSTAR-JGD at 32-33). RESA, on

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<sup>22</sup> In the event that an electric distribution company proposes to enter into a long-term contract that is not the lowest cost option, it bears the burden to demonstrate that is nonetheless in the public interest.

the other hand, argues that the proposed wind contracts are not cost-effective because the energy settlement is more likely to result in a debit to basic service customers than a credit. RESA further argues that the wind contracts will not offer the benefits of price stability, but will instead expose basic service customers to greater price risks (RESA-GS-1, at 6-9, 18-19 (confidential)).

The economic impact of the contracts depends on the difference between: (1) the contract payments that NSTAR Electric is obligated to make; and (2) the proceeds from the sale of the electricity output. In turn, the proceeds from the sale of the electricity output will depend upon: (1) the hourly output of the wind projects; and (2) the wholesale energy spot market price during the hours that the wind projects produce electricity. NSTAR Electric and RESA employed different analyses and reached opposing conclusions regarding the economic impact of the two proposed contracts.

NSTAR Electric's economic analysis relied on: (1) the projected on-peak and off-peak output of each wind facility; and (2) forward NYMEX prices, differentiated by on-peak and off-peak periods,<sup>23</sup> which they used as a proxy for ISO-NE's wholesale energy spot market prices. The Company compared the projected costs of each contract with the expected revenue from the sale of the electricity output to the spot markets (Exh. NSTAR-JGD-4 (confidential)). Based on its analysis, the Company concluded that for both contracts the

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<sup>23</sup> The NYMEX on-peak and off-peak prices for year 2008 change monthly, while the prices for years 2009 through 2012 remain constant throughout the year. For years 2013 through 2018, for which NYMEX prices were not available, the Company assumed that electricity prices would decline slightly from the 2012 NYMEX price levels (Tr. 5, at 497-499, 528-529).

market revenue would exceed the costs on a present value basis over the term of the contracts, and thus would provide net economic benefits to basic service customers (Exh. NSTAR-JGD-4 (confidential)).

RESA's cost-effectiveness analysis differed from NSTAR Electric's in several significant ways. First, the analysis converted: (1) projected on-peak and off-peak output of each resource into hourly values, using both historic and projected hourly output from each resource; and (2) future on-peak and off-peak electricity prices into hourly values based on historic ISO-NE spot market data (Exh. RESA-GS-1, at 17-18 (confidential)). Second, based on each wind facility's projected average hourly output, RESA determined a fixed volume for each contract, thus effectively converting for the purpose of analysis the fixed-price, unit-contingent contracts into fixed-price, fixed-volume contracts in order to compare them to forward NYMEX prices (id.). Using these fixed-volume values, and the projected hourly output and prices, RESA calculated a projected average cost per KWH that reflected the cost of the contracts to customers (id.). Third, RESA estimated a "risk premium" to reflect the fact that actual hourly plant output and or actual hourly price will differ from the forecast output and prices (RESA Supplemental Brief at 16 (confidential)). RESA then added this risk premium to the Adjusted Contract Price. Based on its analysis and Adjusted Contract Price, RESA concluded that the proposed contracts will exceed the monthly market price on a present value basis over the term of the contracts, and thus would not provide economic benefits to basic service customers (Exh. RESA-GS-1, at 20 (confidential)).

NSTAR Electric counters that the premise of the RESA analysis is fundamentally flawed because it fails to account for the fact that the Company's basic service customers are protected from risk through its other basic service contracts (NSTAR Electric Supplemental Brief at 18 (confidential)). As NSTAR Electric asserts, the basic service portfolio of contracts provides 2,500 MW of firm, load-following service (id.). Any credit or debit associated with the 60 MW wind contracts will represent only a small portion of the total basic service portfolio of contracts (id. at 5-6).

The costs and risks associated with the proposed wind contracts must be viewed in the context of the entire portfolio of basic service contracts. The concept of portfolio management (whether for managing electricity contracts or financial investments) is based on compiling the best combination of different types of contracts (or investments) that result in the preferred balance of stable prices and low-costs (or the preferred balanced of risk and reward). The evaluation of any one contract in isolation from the other contracts may miss the important interrelationships between them, such as the ability for one contract to act as a hedge for another.

NSTAR Electric claims that the proposed wind contracts will provide a hedge against the price volatility of basic service because of the fixed-price aspect of its energy settlement (NSTAR Electric Reply Brief at 24-25). NSTAR Electric contends that the energy settlement from the proposed wind contracts will have a dampening effect on the volatility of basic service prices (Tr. 5, at 515-516 (confidential)).

The Department agrees that the proposed wind contracts will act as a hedge against the volatility of basic service prices. Fixed price contracts are often used as hedges against prices that are based on volatile fossil fuel costs.

RESA's economic analysis is based on the premise that the wind contracts will result in increased risk to basic service customers resulting from: (1) the timing of wind power output; (2) hourly spot market prices; and (3) uncertainty associated with forecasts of future wholesale energy prices. RESA labels these variables as "risk" without stating whether they are more likely to bias NSTAR Electric's assumptions upward or downward (i.e., in customers' favor or to their detriment). Because the wind contracts clearly represent a hedge to the inherent risk associated with the current volatility in basic service prices, we do not find this central premise of RESA's economic analysis compelling.

The proposed wind contracts are likely to have a dampening effect on basic service prices and thus will provide some degree of price stability. As such, it is not appropriate to add a "risk premium" to the Adjusted Contract Price, as RESA has done. Such an approach considers the wind contracts in isolation from the other basic service contracts in NSTAR Electric's portfolio, and ignores the hedging benefits that they offer to the basic service portfolio.

RESA claims that wind generation poses additional risks because the wind project owners do not have an incentive to operate during the peak periods, when spot market prices are highest (Exh. RESA-GS-1, at 8 (confidential)). NSTAR Electric counters that wind project owners have a direct incentive to operate during peak periods because: (1) the capacity

markets in New England reward generation facilities for being available during peak periods; (2) there is no incentive or practical requirement to schedule maintenance on an entire wind farm at the same time, unlike fossil-fueled generation facilities, which must occasionally be completely shut down for planned maintenance (NSTAR Electric Supplemental Brief at 6-7 (confidential)). We agree that wind project owners have a clear incentive to operate as much as possible, depending upon the extent of the wind resource. As such, we do not accept that wind projects introduce risk as a result of the market incentives to wind project owners.

RESA also claims that NSTAR Electric's economic analysis overstates the benefits of the wind contracts by not analyzing the energy settlement results using hourly wind generation and hourly spot market prices (Exh. RESA-GS-1, at 14-15 (confidential)). While we agree that estimates of the energy settlement would be more accurate if they were based on more detailed forecasts of the hourly wind generation and the hourly spot market prices, we recognize the inherent uncertainty in forecasting wind generation and market prices. In this case, we are unable to conclude that RESA's analysis represents a more reliable, more accurate, or more appropriate forecast than the analysis presented by NSTAR Electric in support of its case. Furthermore, while RESA's analysis may contain a more detailed representation of wind and energy projections, RESA failed to demonstrate that the higher level of specificity involving a more detailed, hourly analysis would lead to a conclusion that NSTAR Electric's analysis overstated the benefits. While NSTAR Electric's analysis is admittedly presented using more highly aggregated representations of wind facility output and

energy prices, there is no evidence that it is biased in favor of their conclusions. In short, we can not conclude in this instance that greater specificity leads to greater forecast accuracy.

Having established that the proposed wind contracts will offer price stability benefits to basic service customers, it is still important to determine what such benefits might cost. While a modest potential increase in costs may be an appropriate tradeoff for increased price stability, it is important to ensure that such an increase is commensurate with the associated benefits. It is from this perspective that we need to consider the economic impact of the proposed wind contracts.

As noted above, the Company provided a high-level comparison of the wind contract prices to a forecast of wholesale energy market prices, which was based on forward NYMEX prices. This analysis indicates that the energy settlement associated with the wind contracts would provide basic service customers with a net credit over the term of the contract. A significant portion of RESA's economic analysis was based on the notion that the wind contract prices must be converted to a fixed-price, fixed volume contract in order to properly compare them with forward NYMEX prices. NSTAR Electric counters that it is not appropriate to convert the wind contract prices into something that they are not. Instead, NSTAR asserts that the forward NYMEX prices were intended to represent a proxy for ISO-NE market prices, in order to provide the Department with a "comfort level" that the wind contract prices will compare favorably to the market price of electricity (NSTAR Electric Supplemental Brief at 11 (confidential)).

The Department finds that the NSTAR Electric's method of using the forward NYMEX prices as a proxy of future wholesale electricity prices is appropriate for the purposes of reviewing the economics of the proposed wind contracts. While we recognize that this approach represents an approximation of future wholesale energy market conditions, we conclude that it sufficiently reflects broad market expectations and is an appropriate basis for estimating the level of revenues that might be expected from the energy settlement. RESA's methodology of converting the wind contracts to fixed-volume, fixed price contracts is not necessary or demonstrably more appropriate in this context.

In addition, the Company performed a sensitivity analysis that examined the cost-effectiveness of the PPM Contract under different assumptions regarding future spot market prices (Exh. DPU-NSTAR-1-6 (confidential)). This analysis indicates that the proposed wind energy contract is likely to provide economic benefits to basic service customers under a robust set of market conditions.<sup>24</sup> Finally, the Company submitted an independent analysis provided by Navigant, which concluded that the benefits of the contracts should exceed the costs. Based on the above, we conclude that the Company has sufficiently demonstrated that the benefits of the energy settlement process will exceed the costs.

We now turn to the issue of whether the Company has sufficiently demonstrated that its proposed long-term purchase of RECs represents an appropriate and reasonable way to

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<sup>24</sup> The Company analyzed the cost-effectiveness of the PPM Contract under conditions in which market prices were 20 and 40 percent greater, and 20 and 40 percent lower than the NYMEX prices, in order to evaluate the effect that these market conditions would have on NSTAR Green prices (Exh. DPU-NSTAR-1-6 (confidential)).

minimize its RPS compliance costs, consistent with its obligation to ensure the availability of basic service at reasonable and stable rates. See D.T.E. 02-40-B at 44-46.

As stated above, NSTAR Electric evaluated the benefits of the REC purchases by comparing the contract price for RECs to its forecast of market prices for RECs. The Company forecasts that REC prices will decrease in 2010 and again in 2011, and increase between 2013 and 2018 (NSTAR-JGD-4 (confidential)). RESA contends that the Company's forecast during the later years of the contracts is inconsistent with industry practice, which is to hold REC prices flat when quoted more than five years into the future. RESA states that, if the Company's analysis included constant REC prices for the years 2013 through 2018, the contract REC prices would exceed the forecasted market price in most years of the contract (RESA Supplemental Brief at 9 (confidential)).

In evaluating the benefit of the REC purchases, it is appropriate to compare the contract prices to the REC prices the Company would be otherwise expected to pay to comply with its RPS requirement. As with the other Massachusetts electric distribution companies, NSTAR Electric currently purchases RECs on a short-term basis (i.e., in the year that they will be needed for RPS compliance purposes). Thus, the appropriate point of comparison for the contract prices is a projection of short-term REC prices over the ten-year period, rather than the long-term projection that RESA implies is appropriate. The Company does not analyze the benefits of the contractual REC purchases in relation to other long-term purchase alternatives; instead, it considers the benefits in relation to its existing short-term approach (NSTAR Supplemental Brief at 21 (confidential)).

There is, of course, great uncertainty regarding REC prices over the term of the contracts, which makes it difficult to gauge the costs or benefits of the long-term REC purchases. Notwithstanding this uncertainty, the Department concludes that the Company's forecast of future REC prices is reasonable for the purpose of evaluating the economics of the proposed wind contracts. In addition, as with the long-term contractual supply purchases, the Department concludes that the long-term REC purchases provide benefits to basic service customers in terms of stabilizing the Company's RPS compliance costs. Thus, the Department concludes that the Company has sufficiently demonstrated that its proposed long-term purchase of RECs represents an appropriate way to minimize its RPS compliance costs, consistent with its obligation to ensure the availability of basic service at reasonable and stable rates.

Based on the above, the Department concludes that NSTAR Electric has sufficiently demonstrated that the proposed wind contracts are likely to provide economic benefits to basic service customers. The proposed wind contracts not only provide basic service customers with a greater level of price stability, but they do so at a cost that is likely to provide net savings relative to continued reliance on only shorter-term procurements that will be primarily indexed to regional electricity market pricing. Accordingly, the Department finds that the contracts are in the public interest, and approves both the PPM and TransCanada Contracts.

B. Renewable Energy Program Proposed in NSTAR Electric's Petition

1. Introduction

In this section, the Department will consider whether NSTAR Electric's proposed renewable energy program is consistent with applicable law, regulation, and Department

precedent, including whether the design of the program is compatible with the development of competitive markets. In addition, the Department will address the NSTAR Electric Green Service Rider tariffs and the recovery of certain administrative costs. Finally, the Department will address the Mass Energy Settlement and the Cape Light Compact Settlement.

2. Consistency with Applicable Law, Precedent and Regulation

a. Compatibility With Competitive Markets

The issue of renewable energy programs for basic service customers was first addressed in D.T.E. 02-40-B. While the Department declined to require distribution companies to offer renewable energy options to smaller basic service customers, companies were permitted to submit a specific proposal to the Department for review. D.T.E. 02-40, at 46. As part of any such proposal, a distribution company must clearly demonstrate that providing a renewable energy product is compatible with the development of competitive options for the customer classes to which the product would be available. D.T.E. 02-40, at 46. Accordingly, the Department must determine whether the design of the proposed NSTAR Green program is compatible with the development of competitive options for NSTAR Electric's residential and small C&I basic service customers.

To date, the Department has approved one other renewable energy program for basic service customers – National Grid's GreenUp program. Massachusetts Electric Company, D.T.E. 03-55, at 7 (Letter Order dated July 14, 2003). The Department found that GreenUp was compatible with the development of competitive options for basic service customers because: (1) the program is available only to residential and small C&I customers, who have

limited competitive options in the near term; (2) the program does not limit a customer's ability to switch to a competitive generation supplier and customers may leave the program at any time; (3) the program will terminate when 20 percent of residential and small C&I customers switch to competitive supply; and (4) program suppliers are subject to various regulatory requirements similar to those required of competitive generation suppliers including: licensing; information disclosure; and electronic data transfer. Id. at 6-7.

In some respects, the design of the proposed NSTAR Green program is similar to that of National Grid's GreenUp program, in that: (1) both programs are voluntary and offered only to residential and small C&I basic service customers; (2) participating customers pay the basic service rate plus a premium for participation in the program; and (3) participating customers are not restricted from leaving the program and either returning to traditional basic service or switching to a competitive supplier (Exh. NSTAR-PC at 3-4). However, the design of NSTAR Green differs from the design of GreenUp Program in one important way: GreenUp relies on competitive REC suppliers to design, market, and provide renewable energy products to customers, while NSTAR Green relies on the Company to do so using the electricity and REC output purchased through its long-term wind contracts.

In principle, voluntary renewable energy programs that are provided to basic service customers by competitive REC suppliers may be more compatible with the development of competitive markets for smaller customers than a program that is provided by a distribution company. However, in light of the continued lack of an active competitive market for smaller customers, the Department concludes that the proposed NSTAR Green program is likely to

offer customers with opportunities and benefits that might not be offered by the competitive market. Further, we find that NSTAR Green is sufficiently compatible with the development of competitive options for smaller customers because: (1) the program is available only to residential and small C&I customers, who have limited competitive options in the near term; and (2) the program does not limit a customer's ability to switch to a competitive generation supplier, and customers may leave the program at any time. In addition, the proposed Mass Energy and Cape Light Compact Settlements, as discussed below, enhance the program's compatibility with the development of competitive options.

b. Provision of Basic Service

RESA argues that NSTAR Green is inconsistent with statutory requirements regarding the provision of basic service. RESA contends that, pursuant to G.L. c. 164, § 1B(d), electric distribution companies must offer only one kind of basic service that: (1) has a single rate; and (2) may not exceed the monthly market price of electricity (RESA Brief at 12-17, 24-26).

NSTAR Electric contends that RESA has construed the statute too narrowly, and the Department can allow different rates for different basic service customers (NSTAR Reply Brief at 6-12).

Neither statute nor regulation require that distribution companies offer only a single rate to basic service customers. General Laws c. 164, § 1B(d) states that "electric distribution companies shall provide customers with basic service." The Department's regulations on basic service, 220 C.M.R. § 11.04(9)(c)2, state that distribution companies must offer a basic service rate option to customers in which the rate remains constant for a period of up to six

months. As evidenced by our approval of GreenUp in D.T.E. 03-55 and our statements on the pricing and procurement of basic service in D.T.E. 02-40-B, the Department interprets our statutory authority as allowing distribution companies to provide a separate renewable product for basic service customers for which the rate may differ from the underlying basic service rate.

The Department has also previously addressed the requirement under G.L. c. 164, § 1B(d) that the basic service rate may not exceed the monthly market price of electricity in D.T.E. 99-60-A. Here, we stated that basic service prices established through a competitive solicitation are an appropriate indicator of market prices. D.T.E. 99-60-A at 14-16.

As with customers participating in National Grid's GreenUp program, NSTAR Green program participants will continue to pay market-based rates for the underlying basic service product, established through competitive solicitations. NSTAR Green customers will pay a voluntary, cost-based premium to purchase a renewable energy product as an enhancement to basic service.<sup>25</sup>

c. Standards of Conduct

The Department's Standards of Conduct regulations at 220 C.M.R. § 12.00 et seq. were first issued in 1996, in order to ensure that no market participant is in a position to exert unfair or abusive market power in a competitive industry structure. Order Opening Rulemaking re: Standards of Conduct for Gas and Electric Distribution Companies and Their

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<sup>25</sup> The NSTAR Green Service Rider tariffs state how this premium will be calculated and what components will comprise the final rate.

Affiliates, D.P.U. 96-44, at 2 (1996). RESA argues that the manner in which NSTAR proposes to implement its renewable energy program constitutes a competitive undertaking and, therefore, should be offered by an affiliate of NSTAR Electric subject to the Standards of Conduct (RESA Brief at 17-24). NSTAR Electric disputes RESA's assertions and contends that its proposed renewable energy program is not a competitive product, but a basic service option offered by a distribution company.

As discussed in Section V.B.2.b above, the NSTAR Green program is an enhanced basic service product available to customers with limited competitive options. It differs from a competitive product in that the Company: (1) is limited to providing the program to customers located in its service territory; (2) cannot change the price without Department approval; (3) does not contractually bind participants to remain in the program for any specified time period; and (4) will not earn any profit on the services sold. In addition, requiring NSTAR Electric to comply with our Standards of Conduct regulations would severely undermine the ability of the Company to offer the program. While RESA raises concerns about competition, in this case the Department balances the furtherance of competition for smaller basic service customers with providing these customers the opportunity to participate in renewable energy programs. Accordingly, we conclude that the Standards of Conduct do not apply to NSTAR Electric's implementation of NSTAR Green. This finding, however, applies only to renewable energy programs for basic service, as contemplated in D.T.E. 02-40-B and D.T.E. 03-55.

d. Program Marketing Issues

RESA asserts that the manner in which NSTAR Electric proposes to market its renewable energy program is misleading because: (1) participating customers will believe that the output from the wind projects will actually flow into their homes and facilities; and (2) implementation of the program will not have any practical effect on the development of renewable resources in New England (RESA Brief at 29-36). NSTAR Electric acknowledges that it is not possible to deliver the wind-generated electricity directly to customers who enroll in NSTAR Green (NSTAR Electric Reply Brief at 22). Also, NSTAR Electric states that it has not attempted to prove that NSTAR Green will result in incremental benefits to the renewable generation market but, nevertheless, expects that such benefits will materialize (NSTAR Electric Brief at 13; NSTAR Electric Reply Brief at 22, citing PPM Brief at 6, CLF et al. Brief at 5-6).

As an initial matter, the manner in which electricity flows from generation sources to end-use sites is dependent on transmission paths and physical laws. Short of building a generating unit on or adjacent to their own property, customers can never be certain of the energy source of their electricity. Like any provider of a renewable energy product, NSTAR Electric cannot guarantee potential NSTAR Green customers that their electricity will come directly from a renewable resource. Instead, NSTAR Electric can only guarantee potential NSTAR Green customers that funds collected from program participants will be paid to the

renewable resources (e.g., Maple Ridge or Kibby Mountain) for the energy and RECs that they generate.<sup>26</sup>

We expect that, as several commenters contend,<sup>27</sup> well-designed voluntary renewable programs can have a positive effect on the development of renewable resources. However, we recognize that this effect is necessarily indirect and difficult to measure, given the physical nature of power flows on the transmission network and the financial nature of power supply contractual arrangements. In addition, we recognize that the ultimate value of such programs from the perspective of renewable power development will depend upon the level of customer participation. In approving National Grid's GreenUp Program, we did not require the company to demonstrate that its renewable program would have a measurable influence on the development of renewable resources within the region, and we decline to impose such a standard for the renewable energy programs proposed here.

NSTAR Electric's marketing and customer education materials for the NSTAR Green program must explain the implications of the program as accurately and as fully as possible, in order to avoid customer confusion or misunderstanding. Furthermore, it is our expectation that the marketing and customer education materials will be consistent with the Attorney

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<sup>26</sup> The NSTAR Green Service Rider tariff correctly states that NSTAR Green service is "generation service with a mix of renewable power" and that the premium NSTAR Green customers will pay will consist of, along with other cost elements, "the estimated difference between market energy prices and the Company's energy costs associated with the Company's renewable generation contracts" (Exh. NSTAR-HCL-1(a)).

<sup>27</sup> See e.g., TransCanada Reply Brief at 8; CLF et al. Brief at 9-10; CLF et al. Reply Brief at 5; DOER Comments at 3.

General's regulations on the retail marketing and sale of electricity,

940 C.M.R. § 19.00 et seq..<sup>28</sup>

e. Contractual Issues

As discussed above in Section V.A., there is some chance that the PPM Contract may not ultimately be executed. In this event, certain amendments to the NSTAR Green program design may be required, including whether a cap would have to be imposed upon the number of customers who may enroll in the program (see RR-DPU-7 (confidential); RR-DPU-8; RR-DPU-9; RR-DPU-10). We expect that any proposed amendments to the design of the renewable energy program would be submitted to the Department for consideration in NSTAR Electric's compliance filing.

3. Cape Light Compact and Mass Energy Settlements

NSTAR Electric has filed two settlements in this proceeding designed to address several issues raised by the intervenors. The Mass Energy Settlement primarily requires NSTAR Electric to: (1) provide assistance to competitive REC suppliers; (2) pursue billing capability for competitive REC suppliers; and (3) seek recovery of the costs of these activities from customers (RR-MEC-3). The Cape Light Compact Settlement primarily prohibits NSTAR Electric from marketing NSTAR Green in the Cape Light Compact's territory (RR-RESA-3).

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<sup>28</sup> Also, NSTAR Electric should refer to the National Association of Attorneys General, "Environmental Marketing Guidelines for Electricity" (December 1999), in the development of its materials. These guidelines set forth general principles based on laws which prohibit the use of misleading or deceptive advertising claims, including 940 C.M.R. § 19.00 et seq.

In assessing the reasonableness of an offer of settlement, the Department reviews the entire record to ensure that the settlement is consistent with applicable law, including relevant provisions of the Restructuring Act, Department precedent, and the public interest. Boston Edison Company, D.P.U./D.T.E. 96-23, at 13 (1998); Berkshire Gas Company, D.P.U. 96-92, at 8 (1996); Boston Gas Company, D.P.U. 96-50, at 7 (Phase I) (1996). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. Essex County Gas Company, D.P.U. 96-70, at 5-6 (1996); Fall River Gas Company, D.P.U. 96-60, at 5 (1996).

The primary rationale provided by NSTAR Electric for the development of the NSTAR Green program is the lack of competitive options for its residential and small C&I customers (Exh. NSTAR-PC at 5). This is the case in NSTAR Electric's service territory with the exception of the portion served by the Cape Light Compact, which provides residential and small C&I customers with competitive options for supply and RECs (Exh. NSTAR-JGD at 9). Consequently, NSTAR Electric has agreed to refrain from marketing the NSTAR Green program in the Cape Light Compact's territory (RR-RESA-3, Att. at 4). Because residential and small C&I customers within the Cape Light Compact's territory already have access to competitive options, it is reasonable to carve out this portion of NSTAR Electric's service territory from the marketing of the NSTAR Green program. Therefore, the Department finds that the Cape Light Compact Settlement is in the public interest and is approved.

Additionally, the Mass Energy Settlement offers competitive suppliers greater access to not only smaller basic service customers, but all NSTAR Electric's customers. Such access is critical for the fostering of competitive options for residential and small C&I basic service customers. Also, NSTAR Electric agrees to develop a set of terms and conditions to delineate the rights, obligations, and responsibilities of NSTAR Electric and competitive REC suppliers for provision of green attribute products (RR-MEC-3, Att. at 7).<sup>29</sup> The Mass Energy Settlement proposes two means of offering competitive suppliers greater access to NSTAR Electric's basic service customers: (1) EDI functionality, which would provide the supplier with monthly consumption data in an electronic format; and (2) the Billing Alternative, which would add a line item to customer bills and permit billing for non-energy, REC-based products. The Mass Energy Settlement states that these two options are severable (RR-RESA-3, Att. at 6).

Based on our initial review, the Department is concerned by NSTAR Electric's cost estimate of approximately \$910,000 to implement the Billing Alternative (see RR-MEC-1; RR-MEC-3, Att. at 6). Also, the settling parties have not adequately demonstrated that the transition charge is the appropriate rate mechanism for recovery of these costs, as proposed in the Mass Energy Settlement. As such, the Department will not approve the Billing Alternative in this proceeding. In the alternative, the Department finds that the agreement to provide competitive suppliers with EDI functionality is reasonable and is, therefore, approved.

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<sup>29</sup> We note that any such set of terms and conditions would have to be proposed to and approved by the Department prior to becoming effective.

NSTAR Electric may submit a proposal for the recovery of the costs of implementing EDI functionality. At that time, the Department will consider the appropriate amount and manner in which to recover these costs.

Because the remainder of the Mass Energy Settlement provides competitive REC suppliers with greater access to NSTAR Electric's customers, we find that it is in the public interest. Therefore, with the exception of the Billing Alternative, the Department approves the Mass Energy Settlement.<sup>30</sup>

4. Modifications to the NSTAR Green Service Rider Tariff

a. Tariff Language

During evidentiary hearings, certain changes to the language of the NSTAR Green Service Rider tariffs were discussed (Tr. 1, at 175-179). Such changes address how the reconciliation of the contract price to the market price is described in the tariffs (*id.*). The Department directs NSTAR Electric to incorporate these changes into the NSTAR Green Service Rider tariffs as part of its compliance filing in this proceeding.

Also, the need to add language to the NSTAR Green Service Rider tariffs to address the reconciliation of administrative costs was discussed at the hearings (Tr. 1, at 175-176). The Department directs NSTAR Electric to add language to the NSTAR Green Service Rider tariffs to explain that administrative costs (except for those discussed in Section IV.B.4, below) will

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<sup>30</sup> Consistent with the Mass Energy Settlement, Mass Energy has the ability to pursue implementation of the Billing Alternative in a later request to the Department (RR-MEC-3, at 5-6).

be reconciled after year three of the NSTAR Green program. Such language should also describe how the reconciliation of the administrative costs will operate.

b. NSTAR Green Administrative Costs

(1) Introduction

As described in the NSTAR Green Service Rider tariffs, one component of the NSTAR Green premium is the Company's administrative costs to set up and maintain the NSTAR Green program (Exh. NSTAR-HCL at 5). NSTAR Electric proposes to reconcile all administrative costs after year three of the NSTAR Green program (Exh. DPU-NSTAR-1-9(d)).<sup>31</sup> Recovery of two components of the administrative costs is discussed below: (1) NSTAR Electric information system ("NIS") costs; and (2) registration costs.

(2) NIS Cost Recovery

NIS costs are administrative costs which must be incurred by NSTAR Electric in order to initiate the renewable energy program. NSTAR Electric estimates that \$400,000 will be required for modifications to the NIS related to NSTAR Green (Exh. NSTAR-HCL-2). NSTAR Electric proposes to recover all NIS costs in the first three years of the NSTAR Green program (Tr. 1, at 182).

Under NSTAR Electric's cost recovery proposal, customers who opt for NSTAR Green in years one through three would bear a larger share of the NIS costs than customers who enroll in NSTAR Green after year three, even though these NIS modifications will benefit

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<sup>31</sup> Should the NSTAR Green program be discontinued due to lack of customers, then shareholders will bear any unrecovered administrative costs that are associated with the NSTAR Green program (Tr. 1, at 188).

NSTAR Green customers for the life of the renewable energy program. Accordingly, we find it is more appropriate for NSTAR Electric to spread the recovery of these costs over a ten-year period, the term of the wind contracts. When calculating the NSTAR Green premium, the Department directs NSTAR Electric to include thirty percent of the NIS cost estimate for the first three years of the program.

Because NIS costs will be recovered over a longer time period, NSTAR Electric will be permitted to recover carrying charges for these NIS costs at the rate applied to customer deposits.<sup>32</sup> This is the same interest rate applied to the reconciliation of other basic service costs. See Boston Edison Company, D.P.U./D.T.E. 96-23, at Sections I.B.5(b) and I.B.5(c) (NSTAR's Restructuring Settlement Agreement) (1998); Cambridge Electric Light Company/ Commonwealth Electric Company, D.T.E. 97-111, at 76 (1998).

(3) Registration Cost Recovery

NSTAR Electric seeks to recover \$33,081 for customer registration costs related to the NSTAR Green program. The Company states that the registration costs represent the additional costs that NSTAR Electric will incur for answering customer service telephone calls related to NSTAR Green (Exhs. DPU-NSTAR-1-11; DPU-NSTAR-1-11 (revised)). NSTAR Electric states that the value for registration costs was derived by multiplying \$1.92<sup>33</sup> by the

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<sup>32</sup> The customer deposit rate is the average rate paid on two-year United States Treasury notes for the twelve months ending December 31 of each year.

<sup>33</sup> The \$1.92 value represents NSTAR Electric's estimate of the amount of time that customer service representatives would spend on telephone inquiries related to NSTAR Green multiplied by the estimated hourly wage rate for these employees (Exh. (continued...))

projected number of calls generated by customers who seek to enroll in NSTAR Green (i.e., 17,230 calls) (Exh. DPU-NSTAR-1-11 (revised)). NSTAR Electric proposes that registration costs be included in the administrative costs to be reconciled (Tr. 1, at 174-175).

Implicit in the reconciliation of costs is the ability to track actual costs incurred. During the course of the proceeding, NSTAR Electric provided a number of estimated values for registration costs and states that it intends to update and reconcile the values once the actual amounts are known (Tr. 1, at 174-175). However, NSTAR Electric was unable to demonstrate that it will be able to track the actual registration costs that it incurs (Exhs. DPU-NSTAR-1-11; DPU-NSTAR-1-11 (revised); DPU-NSTAR-3-5; DPU-NSTAR-3-6; DPU-NSTAR-3-7; RR-DPU-3; Tr. 1, 190-195; Tr. 3, at 359-365).

NSTAR Electric will not be permitted to recover in its administrative cost reconciling mechanism for NSTAR Green any costs it is unable to track. Therefore, we direct NSTAR Electric to exclude registration costs from the costs the Company is currently seeking to recover as part of the NSTAR Green program. Should the Company later devise a system whereby it can track and document actual registration costs, NSTAR Electric can petition the Department for recovery of these costs through the administrative cost portion of the NSTAR Green program.

## VI. CONCLUSION

Based on the above analysis, the Department concludes that NSTAR Electric's proposed long-term contracts are consistent with applicable statute, Department regulations, and Department precedent. Therefore, for the reasons stated above, the Department approves the PPM and TransCanada Contracts.

Based on the above analysis, the Department concludes that NSTAR Electric's proposed renewable energy program, when considered in conjunction with the Cape Light Compact and Mass Energy Settlements, is consistent with applicable statute, Department regulations, and Department precedent. We further find that the cost recovery mechanisms and rates included in NSTAR Green are just and reasonable, with the exception of those discussed in Section V.4, above. Therefore, for the reasons stated above, the Department approves the NSTAR Green program.

While the Department approves the Company's proposed NSTAR Green program and finds that it will provide an additional choice for basic service customers, we note that voluntary renewable energy programs such as NSTAR Green are not necessary to obtain the benefits of long-term contracts with renewable energy providers. Long-term contracts for renewable energy can represent an equitable, stable, and predictable approach to promoting renewable energy. NSTAR Electric has provided compelling evidence that the proposed wind contracts can help support the development of renewable energy projects, while simultaneously providing benefits to basic service customers. The proposed wind contracts are likely to:

- (1) help dampen the volatility of basic service prices;
- (2) reduce the cost of basic service

through the energy settlement process; (3) reduce the cost of RPS compliance; and (4) have a positive effect on the development of renewable projects in the region. The proposed wind contracts can offer these benefits to all basic service customers regardless of the number of customers that enroll in NSTAR Green or whether NSTAR Green is offered at all.

## VII. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the ten year contract between NSTAR Electric Company and TransCanada Power Marketing Ltd., filed pursuant to G.L. c. 164, § 94A, for wind energy and renewable energy certificates is APPROVED; and it is

FURTHER ORDERED: That the ten year contract between NSTAR Electric Company and Atlantic Renewable Projects II, LLC, filed pursuant to G.L. c. 164, § 94A, for wind energy and renewable energy certificates is APPROVED; and it is

FURTHER ORDERED: That the Memorandum of Agreement between NSTAR Electric Company and Cape Light Compact is APPROVED; and it is

FURTHER ORDERED: That, except for the Billing Alternative discussed herein, the Memorandum of Agreement between NSTAR Electric Company and Energy Consumers Alliance of New England, Inc. d/b/a Massachusetts Energy Consumers Alliance is APPROVED; and it is

FURTHER ORDERED: That, except for certain revisions to the language of the NSTAR Green Service Rider tariffs, the recovery of registration costs, and modifications regarding cost recovery with respect to upgrades to the NSTAR information system discussed

herein, the renewable energy program proposed by NSTAR Electric Company is APPROVED;  
and it is

FURTHER ORDERED: That NSTAR Electric Company shall comply with all other  
directives contained in this Order.

By Order of the Department,

/s/

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Paul J. Hibbard, Chairman

/s/

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W. Robert Keating, Commissioner

/s/

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Tim Woolf, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.